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The *California Regulatory Notice Register* is an official state publication of the Office of Administrative Law containing notices of proposed regulatory actions by state regulatory agencies to adopt, amend or repeal regulations contained in the California Code of Regulations. The effective period of a notice of proposed regulatory action by a state agency in the *California Regulatory Notice Register* shall not exceed one year [Government Code § 11346.4(b)]. It is suggested, therefore, that issues of the *California Regulatory Notice Register* be retained for a minimum of 18 months.

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**PROPOSED ACTION ON  
REGULATIONS**

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**TITLE 2. FAIR POLITICAL  
PRACTICES COMMISSION**

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission ("Commission"), pursuant to the authority vested in it by Section 83112 of the Government Code, proposes to adopt, amend, or repeal regulations in Title 2, Division 6 of the California Code of Regulations. The Commission will consider the proposed regulation at a public hearing on or after **October 8, 2009**, at approximately **10:00 a.m.**

**NOTICE OF INTENTION TO AMEND EXISTING  
CONFLICT-OF-INTEREST CODE**

The Commission is providing notice of its intention to review and amend 2 Cal. Code Reg. Section 18351, the Commission's conflict-of-interest code. Authority for this action is based on Government Code Section 87306. A 45-day written comment period has been established commencing on **August 21, 2009**, and closing on **October 5, 2009**. Written comments concerning the proposed amendments should be directed to the Fair Political Practices Commission, Attention: Dixie Howard, 428 J Street, Suite 620, Sacramento, California 95814. For inquiries, call (916) 322-5660. Any written comments relating to the proposed action must be received no later than **October 5, 2009**, in order for them to be considered by the agency before it amends its code.

The Commission has prepared an Initial Statement of Reasons as a written explanation of the reasons for the amendments. This Initial Statement of Reasons, the regulatory language of the proposed amendment, and other information upon which the proposed amendment is based are available to interested persons at the Commission's address listed above.

After the Commission's public hearing, the agency's proposed conflict-of-interest code will be submitted to the agency's Code Reviewing Body (i.e., the Attorney General's Office) for its review.

**REGULATORY ACTION**

Amend 2 Cal. Code Regs. Section 18351: Pursuant to Government Code Section 87306 and 2 Cal. Code Regs. Section 18750, the Commission will amend its conflict-of-interest code due to changed circumstances, including the creation of new positions which must be designated pursuant to Government Code Section 87302 and relevant changes in the duties assigned to existing positions.

*Cover Page*

- The place of filing for the FPPC Commissioners' statements is being added for informational purposes.

*Executive Office Positions*

- Government Affairs Director: This title is being changed to "Legislative Coordinator."

*Legal Division Positions*

- Assistant General Counsel: This position is being added because it is now an official position in the Legal Division rather than a titled position within the division. Since the position makes decisions that are broad and indefinable, it is subject to reporting under Category I.

*Enforcement Division Positions*

- Accounting Specialist: This title is being changed to "Program Specialist."
- Chief Investigator: This title is being changed to "Supervising Special Investigator II"
- Investigator: This title is being changed to "All Investigators (except Supervising Special Investigator II)"
- Disclosure Category 2: This disclosure category is being amended to include disclosure of interests in real property. It has been determined that Enforcement Division staff assigned to this category may make or participate in making decisions affecting real property interests.

*Administration Division Positions*

- Chief Information Officer: This title is being changed to "Data Processing Manager."

- Associate Information Systems Analyst (Network Operations): This position is being added because it was formerly part of the group designation listed below that is being deleted. Since the position participates in the making of governmental decisions affecting computer hardware or software, it is subject to reporting under Category 5.
- All Information Technology Staff, other than Chief Information Officer, at or above the position of Associate Information Systems Analyst: This group designation is being deleted because it is necessary to enumerate more specific titles. In addition, some of the positions included in this group designation are deemed to not make or participate in the making of governmental decisions.
- Associate Personnel Analyst: This title is being changed to "Personnel Officer."
- Associate Governmental Program Analyst: This position is being deleted because it is an abolished position.
- Staff Services Analyst: This position is being deleted because staff holding this position are not deemed to be making or participating in the making of governmental decisions.

#### SCOPE

The Commission may adopt the language noticed herein, or it may choose new language to implement its decisions concerning the issues identified above or related issues. The Commission must determine that no alternative considered by the agency would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

#### FISCAL IMPACT

Fiscal Impact on Local Government. This regulation will have no fiscal impact on any local entity or program.

Fiscal Impact on State Government. This regulation will have no fiscal impact on any state entity or program.

Fiscal Impact on Federal Funding of State Programs. This regulation will have no fiscal impact on the federal funding of any state program or entity.

The adoption of the proposed amendments: (1) will not impose a cost or savings on any state agency, local

agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code; (2) will not result in any nondiscretionary cost or savings to local agencies; (3) will not result in any cost or savings in federal funding to the state; (4) will not impose a mandate on local agencies or school districts; and (5) will not have any potential cost impact on private persons or businesses including small businesses.

#### AUTHORITY

Section 83112 provides that the Fair Political Practices Commission may adopt, amend, and rescind rules and regulations to carry out the purposes and provisions of the Political Reform Act.

#### REFERENCE

The purpose of this regulation is to implement, interpret and make specific Government Code Sections 87300–87302, and 87306.

#### CONTACT

Any inquiries concerning this proposal should be made to Dixie Howard, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone: (916) 322–5660. Proposed regulatory language can be accessed at [www.fppc.ca.gov](http://www.fppc.ca.gov).

### TITLE 3. DEPARTMENT OF FOOD AND AGRICULTURE

NOTICE IS HEREBY GIVEN that the Department of Food and Agriculture proposes to amend Section 3430(b) of the regulations in Title 3 of the California Code of Regulations pertaining to Karnal Bunt Disease Interior Quarantine.

A public hearing is not scheduled. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the Department no later than 15 days prior to the close of the written comment period. Following the public hearing if one is requested, or following the written comment period if no public hearing is requested, the Department of Food and Agriculture, at its own motion, or at the instance of any interested person, may adopt the proposal substantially as set forth without further notice.

Notice is also given that any person interested may present statements or arguments in writing relevant to the action proposed to the agency officer named below on or before October 5, 2009.

## INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing law provides that the Secretary may establish, maintain and enforce quarantine regulations, as he deems necessary to protect California's agricultural industry and to circumscribe and exterminate or prevent the spread of pests. (Food and Agricultural Code Sections 407, 5301, 5302 and 5322).

Existing Section 3430 provides that an interior quarantine exists against Karnal bunt disease, sets forth the area under quarantine and restricts the movement of hosts and possible carriers of the pathogen from the area under quarantine within California.

The proposed amendment of Section 3430(b) will reduce the quarantine area to approximately 33 square miles in a portion of the Palo Verde Valley, located in Riverside County. The effect of the proposed action will be to remove the authority for the State to regulate the movement of hosts and possible carriers of the Karnal bunt disease pathogen from the area of this county that is removed from regulation. There is no existing, comparable federal regulation or statute.

## COST TO LOCAL AGENCIES AND SCHOOL DISTRICTS

The Department of Food and Agriculture has determined that Section 3430 does not impose a mandate on local agencies or school districts, except that an agricultural commissioner of a county under quarantine has a duty to enforce Section 3430. No reimbursement is required for Section 3430 under Section 17561 of the Government Code because this amendment removed quarantine requirements by removing portions of the regulated areas from the regulation and, therefore, enforcement is no longer necessary for these areas.

The Department also has determined that no savings or increased costs to any state agency, no reimbursable costs or savings under Part 7 (commencing with Section 17500) of Division 4 of the Government Code to local agencies or school districts, no nondiscretionary costs or savings to local agencies or school districts, and no costs or savings in federal funding to the State will result from the proposed action.

## EFFECT ON HOUSING COSTS

The Department has made an initial determination that the proposed action will not affect housing costs.

## EFFECT ON BUSINESSES

The Department has made an initial determination that the proposed action will not have a significant, sta-

tewide adverse economic impact directly affecting California businesses, including the ability of California businesses to compete with businesses in other states.

## COST IMPACT ON AFFECTED PRIVATE PERSON OR BUSINESSES

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

## ASSESSMENT

The Department has made an assessment that the proposed repeal of the regulations would not (1) create or eliminate jobs within California, (2) create new business or eliminate existing businesses within California, or (3) affect the expansion of businesses currently doing business within California.

## ALTERNATIVES CONSIDERED

The Department of Food and Agriculture must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

## AUTHORITY

The Department proposes to amend Section 3430(b) pursuant to the authority vested by Sections 407, 5301, 5302, and 5322 of the Food and Agricultural Code.

## REFERENCE

The Department proposes to amend Section 3430(b) to implement, interpret and make specific Sections 5301, 5302 and 5322 of the Food and Agricultural Code.

## EFFECT ON SMALL BUSINESS

The proposed amendment of this regulation may affect small businesses.

## CONTACT

The agency officer to whom written comments and inquiries about the initial statement of reasons, proposed action, location of the rulemaking file, and request for a public hearing may be directed to is: Stephen S. Brown, Department of Food and Agriculture, Plant Health and Pest Prevention Services, 1220 N Street,



Room 210, Sacramento, California 95814, (916) 654-1017, FAX (916) 654-1018, E-mail: sbrown@cdfa.ca.gov. In his absence, you may contact Liz Johnson at (916) 654-1017. Questions regarding the substance of the proposed regulation should be directed to Stephen S. Brown.

#### INTERNET ACCESS

The Department has posted the information regarding this proposed regulatory action on its Internet website ([www.cdfa.ca.gov/cdfa.pendingregs](http://www.cdfa.ca.gov/cdfa.pendingregs)).

#### AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Department of Food and Agriculture has prepared an initial statement of reasons for the proposed action, has available all the information upon which its proposal is based, and has available the express terms of the proposed action. A copy of the initial statement of reasons and the proposed regulations in underline and strikeout form may be obtained upon request. The location of the information on which the proposal is based may also be obtained upon request. In addition, when completed, the final statement of reasons will be available upon request. Requests should be directed to the contact named herein.

If the regulations amended by the Department differ from, but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of amendment. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency officer (contact) named herein.

### TITLE 8. DIVISION OF WORKERS' COMPENSATION

STATE OF CALIFORNIA  
DEPARTMENT OF INDUSTRIAL RELATIONS  
DIVISION OF WORKERS' COMPENSATION

#### NOTICE OF PROPOSED RULEMAKING

**Subject Matter of Regulations: Medical Provider Networks, Employee Information, and Workers' Compensation Claim Form (DWC 1) and Notice of Potential Eligibility**

**Title 8, California Code of Regulations,  
Sections 9767.3, 9767.6, 9767.8, 9767.12,  
9767.16, 9880, 9881, 9881.1, 10139**

**NOTICE IS HEREBY GIVEN** that the Administrative Director of the Division of Workers' Compensation,

pursuant to the authority vested in her by Labor Code sections 59, 124, 133, 138.3, 138.4, 139.6, 3550, 3551, 4603.5, 4616, and 5307.3, proposes to amend regulations within Article 3.5, Subchapter 1 of Chapter 4.5 of Title 8, California Code of Regulations, commencing with section 9767.3, relating to Medical Provider Networks.

In addition, the Administrative Director proposes to amend regulations within Article 8.5, Subchapter 1 of Chapter 4.5 of Title 8, California Code of Regulations commencing with section 9880, relating to Employee Information for Workers' Compensation, and a regulation within Article 9, Subchapter 1.5 of Chapter 4.5 of Title 8, California Code of Regulations, section 10139. These regulations concern the written notice to new employees, the posting of notice to employees, the notice to employees poster, and the workers' compensation claim form (DWC 1) and notice of potential eligibility, respectively.

#### PROPOSED REGULATORY ACTION

The Department of Industrial Relations, Division of Workers' Compensation (hereinafter "Division"), proposes to amend regulations within Article 3.5, Subchapter 1 of Chapter 4.5 of Title 8, California Code of Regulations, commencing with section 9767.3, relating to Medical Provider Networks:

Section 9767.3	Application for a Medical Provider Network Plan
Section 9767.6	Treatment and Change of Physician Within MPN
Section 9767.8	Modification of Medical Provider Network Plan; Notice of Medical Provider Network Plan Modification
Section 9767.12	Employee Notification
Section 9767.16	Notice of Employee Rights Upon Termination or Cessation of Use of Medical Provider Network

The Division also proposes to amend regulations within Article 8.5, Subchapter 1 of Chapter 4.5 of Title 8, California Code of Regulations, commencing with section 9880, relating to Employee Information:

Section 9880	Written Notice to New Employees
Section 9881	Posting of Notice to Employees
Section 9881.1	Notice to Employees Poster

The Division also proposes to amend a regulation within Article 9, Subchapter 1.5 of Chapter 4.5 of Title 8, California Code of Regulations, section 10139, relating to Claim Form: Availability, Filing, Acknowledgment of Receipt, Dismissal:

Section 10139 Workers' Compensation Claim Form (DWC 1) and Notice of Potential Eligibility

### PUBLIC HEARING

A public hearing has been scheduled to permit all interested persons the opportunity to present statements or arguments, oral or in writing, with respect to the subjects noted above, on the following dates:

**Date:** **October 8, 2009**

**Time:** **10:00 a.m. to 5:00 p.m. or conclusion of business**

**Place:** **Elihu Harris State Office Building — Auditorium  
1515 Clay Street  
Oakland, California 94612**

The State of California Building and its Auditorium are accessible to persons with mobility impairments. Alternate formats, assistive listening systems, sign language interpreters, or other types of reasonable accommodation to facilitate effective communication for persons with disabilities, are available upon request.

**If you will require accommodation to attend the hearing, please contact the Statewide Disability Accommodation Coordinator at 1-866-681-1459 (toll free), or through the California Relay Service by dialing 711 or 1-800-735-2929 (TTY/English) or 1-800-855-3000 (TTY/Spanish) as soon as possible to request assistance.**

In order to ensure unimpeded access for disabled individuals wishing to present comments and facilitate the accurate transcription of public comments, camera usage will be allowed in only one area of the hearing room. To provide everyone a chance to speak, public testimony will be limited to 10 minutes per speaker and should be specific to the proposed regulations. Testimony which would exceed 10 minutes may be submitted in writing.

Please note that public comment will begin promptly at 10:00 a.m. and will conclude when the last speaker has finished his or her presentation. If public comment concludes before the noon recess, no afternoon session will be held.

The Administrative Director requests, but does not require that, any persons who make oral comments at the hearings also provide a written copy of their comments. Equal weight will be accorded to oral comments and written materials.

### WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the

proposed regulatory action to the Division. The written comment period closes at **5:00 p.m., on October 8, 2009**. The Division will consider only comments received by the Division by that time. Equal weight will be accorded to oral comments presented at the hearing and written materials.

Submit written comments concerning the proposed regulations prior to the close of the public comment period to:

Maureen Gray, Regulations Coordinator  
Division of Workers' Compensation  
Post Office Box 420603  
San Francisco, CA 94142

Written comments may be submitted by facsimile transmission (FAX), addressed to the above-named contact person at (510) 286-0687. Written comments may also be sent electronically (via e-mail) using the following e-mail address: [dwcrules@dir.ca.gov](mailto:dwcrules@dir.ca.gov).

Unless submitted prior to or at the public hearing, Ms. Gray must receive all written comments no later than **5:00 p.m. on October 8, 2009**.

### AUTHORITY AND REFERENCE

The Administrative Director is undertaking this regulatory action pursuant to the authority vested in her by Labor Code sections 59, 124, 133, 138.3, 138.4, 139.6, 3550, 3551, 4603.5, 4616, and 5307.3.

Reference is to Labor Code sections 132(a), 139.48, 139.6, 3209.3, 3550, 3551, 3600, 4600, 4600.3, 4601, 4603, 4604.5, 4609, 4616, 4616.1, 4616.2, 4616.3, 4616.5, 4616.7, 4650, 4651, 4656, 4658.5, 4658.6, 4700, 4701, 4702, 4703, 5307.27, 5400, 5401, 5401.7, and 5402.

### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Administrative Director of the Division of Workers' Compensation proposes to amend existing regulations concerning Medical Provider Networks ("MPN"), the written notice to new employees, the posting of notice to employees, the notice to employees poster, and the workers' compensation claim form (DWC 1) and notice of potential eligibility.

Labor Code section 4616(a) provides that an insurer or employer may establish or modify a medical provider network for the provision of medical treatment to injured employees. Labor Code section 4616(g) provides that the administrative director shall adopt regulations to implement MPNs.

Labor Code §§3550, 3551 and 3600 authorize the Administrative Director to prescribe the form and content of the Notice to New Employees poster and the con-

tent of the written notice to new employees. Labor Code §5401 authorizes the Administrative Director to prescribe the form and content of the workers' compensation claim form (DWC 1) and notice of potential eligibility.

The proposed amendments to the regulations are intended to implement, interpret or make specific the applicable Labor Code sections as follows:

- **Proposed Amendments to Section 9767.3 — Application for a Medical Provider Network Plan**

Section 9767.3 specifies the information required in an application for a MPN.

The proposed amendments to subdivision (d)(6) and (e)(6) clarify that the MPN application must be verified by an employee of the MPN Applicant who has the authority to act on behalf of the Applicant with respect to the MPN. The amendments also clarify that the authorized individual must also sign a verification.

The proposed amendments to subdivision (d)(7) and (e)(7) replace "an" with "a".

The proposed amendments to subdivisions (d)(8)(I) and (e)(11) clarify that specific information for the MPN contact and the MPN's provider listing access can be filled in after approval of the MPN employee materials.

- **Proposed Amendments to Section 9767.6 — Treatment and Change of Physician Within MPN**

Section 9767.6 sets forth the requirements for treatment with MPN physicians and for changing physicians within the MPN.

Subdivision (b) is revised to delete reference to the ACOEM guidelines, as the Administrative Director has now adopted the Medical Treatment Utilization Schedule (MTUS), which replaces the use of the ACOEM guidelines.

Subdivision (f) is amended to clarify that a Change of Treating Physician petition cannot be used if an employee is treating with a MPN physician.

- **Proposed Amendments to Section 9767.8 — Modification of Medical Provider Network Plan**

Section 9767.8 sets forth the filing requirements for modifying an MPN plan.

Subdivision (a)(10) is revised to include any other material changes to the MPN application as a material modification that requires a modification filing. Examples include changes in use of a deemed entity, change in MPN contact information, and change in provider listing access or website information.

Subdivision (b) is revised to require a material modification filing within five business days when the authorized individual has changed for an MPN applicant.

On the corresponding form, "Notice of Medical Provider Network Plan Modification §9767.8", the following changes are made:

- Under item number 10, on the line beginning with "Name of Authorized Individual," the word "Organization" is added to the line to be filled out.
- On the second page, the third check box is revised to include "or Authorized Individual" as a listed material change requiring modification.
- On the second page, the eleventh and last check box, "Other", examples are added in parentheses, including "changes in use of a deemed entity, change in MPN contact information, and change in provider listing access or website information." The parentheses are removed from "please describe," which is modified in form to state "Please describe and attach documentation."

- **Proposed Amendments to 9767.12 — Employee Notification**

Section 9767.12 specifies the written information required to be provided to employees on how to use the MPN.

The proposed amendments to subdivision (a) change "each" to "every" and reduce the requirement that covered employees be given 30 day notice before implementation of an MPN to 14 day notice. The text regarding distribution of the MPN employee notification is deleted. Another amendment requires that the MPN notices be provided in both English and Spanish or whichever is more appropriate for the employee.

Subdivision (a)(1)–(13) has been deleted and moved to subdivision (f)(1)–(13). Subdivision (a)(1)–(5) has been replaced with an initial written MPN implementation notice to give employees initial notice of coverage under an MPN. It requires the following minimal information to be provided to all employees to be covered by an MPN: that coverage will begin under the MPN except if the employee has predesignated a physician or medical group, the date coverage begins, the potential that existing injuries may be covered under the MPN, that 30-day control applies when an MPN is not in effect, and MPN contact information.

The existing text for subdivision (b) is deleted and moved to subdivision (g). The language in subdivision (b) is replaced by sample MPN implementation notice language.

The existing text for subdivision (c) is deleted and replaced with the requirement that distribution of the initial MPN implementation notice occur at least 14 days prior to MPN implementation or at time of hire for new employees. Subdivision (c) is also amended to allow



multiple means for distribution of the MPN implementation notice, including on a paystub, with a paycheck, or by electronic means for those employees who have sufficient electronic access to receive the notice.

Subdivision (d) has been added to address a different MPN notice, the existing complete written MPN employee notification that is currently provided to all covered employees. This notification has been modified to only be provided at injury and at transfer into the MPN. The language requirement has been amended to require the notification be provided in English and Spanish or whichever is more appropriate for the employee. The complete MPN employee notification is also required to be posted next to the workers' compensation poster required by section 9881.

Subdivision (e) has been added to allow multiple means for distribution of the complete MPN employee notification, including on a paystub, with a paycheck, or by electronic means for those employees who have sufficient electronic access to receive the notice.

Subdivision (f) includes all the information required to be in the complete employee notification. The requirements are the same as in the former subdivision (a)(1)–(13) except for the following changes:

Subdivision (f)(1) clarifies that a MPN contact is responsible for addressing MPN questions and problems.

Subdivision (f)(3) has been amended to require that employees have access to a regional area provider listing at minimum and that online provider listings be regularly updated and that necessary provider listing access information be provided to all covered employees.

Subdivision (f)(4) has been amended to just require information about how to access medical care.

Subdivision (f)(5) has been replaced to require the mileage, time requirements and alternative access standards required under section 9767.5.

The remaining requirements in former (a)(5)–(13) have been renumbered as (f)(6)–(f)(14).

Subdivision (f)(13) and (f)(14) also have been amended to conform the language in both subdivisions to be consistent regarding the distribution of information about the transfer of care and continuity of care policies.

Subdivision (g) is created to include the language deleted from subdivision (b) regarding Independent Medical Reviews.

- **Proposed Amendments to Section 9767.16 — Notice of Employee Rights Upon Termination or Cessation of Use of Medical Provider Network**

Section 9767.16 specifies the requirements for notices of termination, cessation of use or change of MPN to be distributed to employees at those times.

The proposed amendment to subdivision (a) clarifies that the MPN Applicant whose MPN will no longer be used is responsible for distributing the notice of termination or cessation of use of its MPN. The extraneous reference to “(“MPN”)” has also been deleted. The language requirement is modified to require the notices in both English and Spanish or whichever is more appropriate for the employee.

The proposed amendment to subdivision (a)(1) clarifies who is responsible for the termination or cessation of MPN notice and when the notice is required to be distributed. Subdivision (a)(1)(A)–(E) shortens the termination notice by requiring only the following information: the name of the MPN and its date of termination or cessation of use, whether coverage will continue under the MPN for existing injuries, MPN contact information, and notice that 30-day control applies when a MPN is not in effect.

The existing text in subdivision (a)(2) is deleted and replaced by sample MPN termination or cessation of use notice language.

Subdivision (a)(3) is added to allow multiple means for distribution of the termination or cessation of use notice, including on a paystub, with a paycheck, or by electronic means for those employees who have sufficient electronic access to receive the notice.

Subdivision (a)(4) is added to clarify that pending Independent Medical Reviews will end with the employee's MPN coverage.

The language in subdivision (b) has been deleted and replaced by language stating which MPN Applicant is responsible for providing a change of MPN notice within the revised 14-day notice period.

Subdivision (b)(1)–(5) are created to include the specific notice requirements for a change of MPN notice: that coverage will begin under the MPN except if the employee has predesignated, the date coverage begins, the potential that existing injuries may be covered under the MPN, that 30-day control applies when a MPN is not in effect, and MPN contact information.

The language in subdivision (c) is deleted to eliminate the filing of the change of MPN notices with DWC and replaced by sample change of MPN notice language.

Subdivision (d) is added to include the deleted language in subdivision (b) to allow the distribution of a combined Notice of Termination or Cessation of Use of MPN and a Notice of a Change of MPN if all the regulatory requirements for both notices are met.

Subdivision (e) is added to require the notices be provided in English and Spanish or whichever is more appropriate for the employee.

Subdivision (f) is added to allow multiple means for distribution of the change of MPN notice, including on a paystub, with a paycheck, or by electronic means for those employees who have sufficient electronic access to receive the notice.

Subdivision (g) is added to require the workers' compensation poster be updated to reflect a change of MPN coverage.

Subdivision (h) is added to state the deleted language in subdivision (c)(1) and to change the 30-day MPN implementation notice period to a 14-day notice period.

The Reference section is also updated.

• **Proposed Amendments to Section 9880 — Written Notice to New Employees**

Section 9880 specifies the information required in the written notice to new employees.

The proposed amendment to subdivision (c)(7) clarifies that predesignation of a personal physician or a medical group is allowed.

The proposed amendment to subdivision (e)(9) eliminates the vocational rehabilitation reference to reflect the sunset of these benefits.

Subdivision (c)(14) is added to require a general description about MPNs to be provided to employees, including the predesignation exemption, when to treat with a MPN physician and how to get more information about a MPN.

The Authority and Reference sections are also updated.

• **Proposed Amendments to Section 9881 — Posting of Notice to Employees**

Section 9881 specifies the workers' compensation information required to be posted for employees.

The proposed amendment to subdivision (c)(3) deletes the requirement for a physician telephone number to be listed.

The proposed amendment to subdivision (c)(7) clarifies that predesignation of a personal physician or a medical group is allowed.

The proposed amendment to subdivision (c)(8) eliminates the vocational rehabilitation reference to reflect the sunset of these benefits as of January 1, 2009.

Subdivision (c)(13) is added to require a general description about MPNs to be provided to employees, including the predesignation exemption, when to treat with a MPN physician and how to get more information about a MPN. The subdivision also requires that MPN contact information, available website address, and current MPN coverage information be included on the workers' compensation poster required in section 9881.1.

The proposed amendment to the duplicate subdivision (c) is to reletter the subdivision to (d).

The Authority and Reference sections are also updated.

• **Proposed Amendments to Section 9881.1 — Notice to Employees Poster**

Section 9881.1 is the DWC workers' compensation poster with the information required to be posted for employees as set forth in Section 9881.

The proposed amendment to the first bullet point titled, "Medical Care" deletes the reference to "injuries occurring on or after 1/1/04" to state that medical services may be limited irrespective of date of injury.

The proposed amendment to the second bullet point titled, "Temporary Disability (TD) Benefits" updates the temporary disability payment information.

The fourth bullet point titled, "Vocational Rehabilitation" is deleted to reflect the sunset of these benefits as of January 1, 2009.

The proposed amendment to the fifth bullet point titled "Supplemental Job Displacement Benefit" clarifies the existing language,

The section titled "Naming your Own Physician Before Injury" is revised to include "or Illness" and "(Predesignation)" to the section title. The language is also revised to clarify the current predesignation requirements.

The section titled, "If You Get Hurt: 1. Get Medical Care" is shortened to state that for emergency care, call 911 to obtain help from a hospital, ambulance, fire or police department and the spaces for separate telephone numbers for each has been deleted. The number for a physician has also been deleted.

The section titled, "Report Your Injury" is shortened to not require an employee representative's name and phone number to be included on the poster. The rest of the text for the section is revised to be more concise and more stylistically consistent with the rest of the poster language.

The section titled, "See Your Primary Treating Physician (PTP)" is revised to reflect current predesignation requirements and clarifies the information regarding Health Care Organizations (HCOs) and MPNs.

A section titled, "Medical Provider Networks" is added to include a general description about MPNs to be provided to employees, including the predesignation exemption, when to treat with a MPN physician and how to get more information about a MPN. The poster also is amended to require that MPN contact information, available website address, and current MPN coverage information be included.

The section titled, "Discrimination" is amended to delete the colon and to replace it with a period.

The section titled, "Questions?" is amended to shorten the section by deleting the specific Claims Administrator's address to be filled in on the poster. The sen-

tence requiring the name of the workers' compensation insurer is also shortened. Contact information for DLSE and for DWC's information and assistance officers is condensed and revised to include that information can be obtained through the website for both DWC and DLSE.

Conforming revisions are made to the Spanish version. Additional revisions are made to the Spanish version to more accurately reflect the English version.

The Authority and Reference sections are also updated.

• **Proposed Amendments to Section 10139 — Workers' Compensation Claim Form (DWC 1) and Notice of Potential Eligibility**

Section 10139 sets forth the Workers' Compensation Claim Form (DWC 1) and Notice of Potential Eligibility (NOPE). The NOPE contains information about workers' compensation benefits and the instructions for filling out the claim form when an employee is injured and wishes to file a workers' compensation claim. Amendments are only being made to the NOPE; the face of the claim form is not amended.

The section titled, "Medical Care" deletes the reference to "injuries occurring on or after 1/1/04" to clarify that medical services may be limited irrespective of date of injury.

The section titled, "The Primary Treating Physician (PTP)" is revised to reflect current predesignation requirements and clarifies the information regarding HCOs and MPNs. The text for the remainder of the section is revised to be more concise and more stylistically consistent with the rest of the poster language.

The section titled, "Disclosure of Medical Records" is revised to clarify the employee's privacy rights.

The section titled, "Payment for Temporary Disability (Lost Wages)" updates the temporary disability payment information to reflect current limits.

The section titled, "Vocational Rehabilitation" is deleted to reflect the sunset of these benefits as of January 1, 2009.

The section titled "Supplemental Job Displacement Benefit (SJDB)" rewords the existing language for clarity.

The section titled "It is illegal for your employer" is amended to include the DWC website information.

Conforming revisions are made to the Spanish version. Additional revisions are made to the Spanish version to more accurately reflect the English version.

The Authority and Reference sections are also updated.

**DISCLOSURES REGARDING THE PROPOSED REGULATORY ACTION**

The Administrative Director has made the following initial determinations:

- Significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: None.
- Adoption of this regulation will not: (1) create or eliminate jobs within the State of California; (2) create new businesses or eliminate existing businesses within the State of California; or (3) affect the expansion of businesses currently doing business in California.
- Effect on Housing Costs: None.
- Cost impacts on representative private person or business: The Administrative Director has determined that the proposed regulations will not have a significant adverse economic impact on representative private persons or directly affected businesses. These representative private persons or directly affected businesses are insurance companies, employers and self-insured employers. These proposed amendments are expected to reduce the costs of providing notice to the employees regarding the MPN. The minimal costs of updating the poster, new employee information, and the claim form also should be offset by the savings on notice expenses.

**FISCAL IMPACTS**

- Costs or savings to state agencies or costs/savings in federal funding to the State: The proposed amendments eliminate a significant filing with the Division, which would allow existing state resources to be used more efficiently in administering the Medical Provider Network program. Although the proposed amendments may require the State Compensation Insurance Fund (SCIF) to incur a limited printing expense to update the workers' compensation poster, new employee information and claim form, these costs should be offset by the savings from the shorter notices and electronic distribution. The Division expects user funding to continue to cover the costs of administering the MPN program.
- Local Mandate: None. The proposed regulations will not impose any new mandated programs or increased service levels on any local agency or school district. The potential costs imposed on all public agency employers by these proposed regulations, although not a benefit level increase, are not a new State mandate because the regulations apply to all employers, both public and private, and not unique to local governments. The Administrative Director has determined that the proposed regulations will not impose any new



mandated programs on any local agency or school district.

- Cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code: None. (See “Local Mandate” section above.)
- Other nondiscretionary costs/savings imposed upon local agencies: None. The proposed regulation does not apply to any local agency or school district. (See “Local Mandate” section above.)

#### EFFECT ON SMALL BUSINESS

The Administrative Director has determined that the proposed regulation may enable small businesses to reduce the costs of distributing notices to its employees covered under an MPN.

#### CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), the Administrative Director must determine that no reasonable alternative considered or that has otherwise been identified and brought to the Administrative Director’s attention would be more effective in carrying out the purpose for which the actions are proposed, or would be as effective and less burdensome to affected private persons than the proposed actions.

The Administrative Director invites interested persons to present reasonable alternatives to the proposed regulation at the scheduled hearing or during the written comment period.

#### PUBLIC DISCUSSIONS OF PROPOSED REGULATIONS

Pursuant to Government Code section 11346.45, the text of the draft proposed regulations was made available for pre-regulatory public comment by the general public through a posting on the Division’s Internet message board (the DWC Forums).

#### AVAILABILITY OF INITIAL STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, RULEMAKING FILE AND DOCUMENTS SUPPORTING THE RULEMAKING FILE/INTERNET ACCESS

An Initial Statement of Reasons and the text of the proposed regulations in plain English have been pre-

pared and are available from the contact person named in this notice. The entire rulemaking file will be made available for inspection and copying at the address indicated below.

As of the date of this notice, the rulemaking file consists of the Notice, the Initial Statement of Reasons, the proposed text of the regulations, pre-rulemaking comments, and the Economic and Fiscal Impact Statement (Form 399). As public comments are received during the rulemaking process, they will be added to the rulemaking file.

In addition, the Notice, Initial Statement of Reasons, and proposed text of regulations may be accessed and downloaded from the Division’s website at [www.dir.ca.gov/dwc](http://www.dir.ca.gov/dwc). To access them, click on the “Participate in DWC Rulemaking” link and scroll down the list of rulemaking proceedings to find the current “Medical Provider Network, Employee Information, and Workers’ Compensation Claim Form (DWC 1) and Notice of Potential Eligibility Regulations” rulemaking.

Any interested person may inspect a copy or direct questions about the proposed regulations and any supplemental information contained in the rulemaking file. The rulemaking file will be available for inspection at the headquarters of the Division of Workers’ Compensation, 1515 Clay Street, Oakland, California, between 9:00 a.m. and 4:30 p.m., Monday through Friday. Copies of the proposed regulations, initial statement of reasons and any information contained in the rulemaking file may be requested in writing to the contact person.

#### CONTACT PERSON

Nonsubstantive inquiries concerning this action, such as requests to be added to the mailing list for rulemaking notices, requests for copies of the text of the proposed regulations, the Initial Statement of Reasons, and any supplemental information contained in the rulemaking file may be requested in writing at the same address. The contact person is:

Maureen Gray, Regulations Coordinator  
Division of Workers’ Compensation  
Post Office Box 420603  
San Francisco, CA 94142

Inquiries may be submitted by e-mail to: [mgray@dir.ca.gov](mailto:mgray@dir.ca.gov). The telephone number of the contact person is (510) 286-7100.

#### BACKUP CONTACT PERSON/CONTACT PERSON FOR SUBSTANTIVE QUESTIONS

In the event the contact person is unavailable, or to obtain responses to questions regarding the substance



of the proposed regulations, inquiries should be directed to the following backup contact person:

Yu-Yee Wu  
Division of Workers' Compensation  
Post Office Box 420603  
San Francisco, CA 94142

The telephone number of the backup contact person is (510) 286-7100.

#### AVAILABILITY OF CHANGES FOLLOWING PUBLIC HEARING

Upon closure of time for receipt of public comments, the Administrative Director may adopt the proposed rulemaking substantially as described above or may modify it if such modifications are sufficiently related to the original text.

With the exception of technical, grammatical or other non-substantive changes, if the Administrative Director makes any changes to the proposed regulations as a result of the public hearing and public comment received, the full text of such modifications to the proposed rulemaking, with changes clearly indicated, will be made available for public comment 15 days prior to their adoption. Notice of the modified text will be mailed to those persons who submit written or oral comments related to the proposed rulemaking or who request notification of any changes to the proposed rulemaking.

#### AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the contact person named in this notice or may be accessed on the website: [www.dir.ca.gov/dwc](http://www.dir.ca.gov/dwc).

#### AUTOMATIC MAILING

A copy of this Notice, the Initial Statement of Reasons, and the text of the regulations, will automatically be sent to those interested persons on the Administrative Director's mailing list.

If adopted, the proposed amendments to the medical provider network regulations will appear in Title 8, California Code of Regulations, sections 9767.3, 9767.6, 9767.8, 9767.12 and 9767.16. The proposed amendments to the regulations on the workers' compensation employee information will appear in Title 8, California Code of Regulations, sections 9880, 9881, and 9881.1. The proposed amendments to the workers' compensation claim form (DWC 1) and notice of potential eligi-

bility will appear in Title 8, California Code of Regulations section 10139.

## TITLE 10. DEPARTMENT OF INSURANCE

### NOTICE OF PROPOSED ACTION

**DATE: August 21, 2009**  
**REGULATION FILE: REG-2009-00019**

#### SUBJECT OF PROPOSED RULEMAKING

The Insurance Commissioner proposes to adopt the regulation described below after considering comments from the public. The Commissioner proposes to add to Title 10, Chapter 5, Subchapter 1, of the California Code of Regulations a new article 14 "Underwritten Title Companies" and a new section 2194.70 entitled "Underwritten Title Company Limitation on Liability." The proposed regulations will promote the regulation of the business of title insurance, govern the conduct of underwritten title companies and will implement and effect compliance by the title industry with the Underwritten Title Company statute of the Insurance Code commencing with Insurance Code section 12389 and other related statutes.

#### PUBLIC HEARING

The Commissioner will hold a public hearing to provide all interested persons an opportunity to present statements or arguments, either orally or in writing, with respect to this regulation, as follows:

**Date and time:** **Monday, October 5, 2009 at 1:00 p.m.**

**Location:** **Department of Insurance  
Administrative Hearing Bureau  
Hearing Room  
45 Fremont Street, 22nd Floor  
San Francisco CA 94105**

The hearing will continue on the date noted above until all testimony has been submitted or 4:00 p.m., whichever is earlier.

#### PRESENTATION OF WRITTEN COMMENTS; CONTACT PERSONS

All persons are invited to submit written comments on the proposed regulations during the public comment period. The public comment period will end at 5:00 p.m. on October 5, 2009. Please direct all written comments to the following contact person:

Jill Alexis Jacobi  
Senior Staff Counsel  
California Department of Insurance  
45 Fremont Street, 24th Floor  
San Francisco, CA 94105  
Telephone: (415) 538-4426

Questions regarding procedure, comments, or the substance of the proposed action should be addressed to the above contact person. In the event the contact person is unavailable, inquiries regarding the proposed action may be directed to the following backup contact person:

Arnold Kessler  
Senior Staff Counsel  
California Department of Insurance  
45 Fremont Street, 24th Floor  
San Francisco, CA 94105  
Telephone: (415) 538-4157

#### DEADLINE FOR WRITTEN COMMENTS

All written materials must be received by the Insurance Commissioner, addressed to the contact persons at his address listed above, no later than 5:00 p.m. on October 5, 2009. Any written materials received after that time may not be considered.

#### COMMENTS TRANSMITTED BY E-MAIL OR FACSIMILE

The Commissioner will accept written comments transmitted by e-mail provided they are sent to the following e-mail address: [JacobiJ@insurance.ca.gov](mailto:JacobiJ@insurance.ca.gov). The Commissioner will also accept written comments transmitted by facsimile that are ten pages or less and are directed to the attention of Jill Jacobi and sent to the following facsimile number: (415) 904-5729. **Comments sent to other e-mail addresses or other facsimile numbers will not be accepted. Comments sent by e-mail or facsimile are subject to the deadline set forth above for written comments.**

#### AUTHORITY AND REFERENCE

The proposed regulations will implement, interpret and make specific the provisions of Insurance Code sections 533, 700, 717, 720, 12389, 12389.1, 12389.2, 12389.5, 12389.6 and 12921. Insurance Code sections 720, 12389, and 12921 provide authority for this rule-making, as do the following decisions: *CalFarm Ins. Co. v. Deukmejian*, 48 Cal.3d 805 (1989), *20th Century Ins. Co. v. Garamendi*, 8 Cal. 4th 216 (1994), *McHugh*

*v. Santa Monica Rent Control Board*, 49 Cal. 3d 348 (1989) and *George v. Department of Alcoholic Beverage Control*, 149 Cal.App.2d 702 (1957).

#### INFORMATIVE DIGEST

#### SUMMARY OF EXISTING LAW AND POLICY STATEMENT OVERVIEW

Commencing in 1973, the California legislature enacted article 3.7 of Chapter 1 Title Insurance, Part 6, Division 2 of the Insurance Code, in pertinent parts Insurance Code sections 12389, 12389.1, 12389.2, 12389.4, 12389.5 and 12389.6, entitled "Underwritten Title Companies." Underwritten title companies are California corporations licensed for the purpose of preparing title searches, title examinations, title reports and certificates of abstracts of title upon which a title insurer writes title insurance policies. *See* Insurance Code § 12389.5. Underwritten title companies may also be licensed to perform title related escrow services. *See* Insurance Code § 12389(b). Underwritten title companies may only perform escrow services and title insurance related services pursuant to contractual arrangements with one or more title insurers; these contractual arrangements are generally known as underwriting agreements. *See* Insurance Code § 12389.6. The minimum financial requirements for licensure of underwritten title companies are established by counties of licensure and are generally lower than those of title insurers. *See* Insurance Code § 12389(a)(2).

Title insurers are insurance companies who write policies that indemnify, insure or guarantee the owners of property for loss or damage resulting from incorrectness of searches related to property title, liens or encumbrances on or defects in title and the invalidity or unenforceability thereof and are required by law to be admitted (licensed) for class four title insurance. *See* Insurance Code §§ 104, 700. Title insurers may write policies upon searches performed by underwritten title companies, or they may transact title business on their own as direct writers. The policies that the title insurers write obligate the title insurers to pay claims; underwritten title companies may contract in their underwriting agreement to pay claims *on behalf of the title insurer*. *See* California Code of Regulations Title 10 sections 2695.1 and 2695.2(i), (j) and (m) (*emphasis added*). The minimum financial requirements for admission (licensure) of title insurance companies are statewide and are generally higher than those of underwritten title companies. *See* Insurance Code §§ 12359 and 12370.

The California title marketplace is highly concentrated with a dozen or so title insurers currently licensed and operating. These title insurers are in a superior eco-

conomic position to their agent underwritten title companies and, given the unequal bargaining power between these entities' provisions in underwriting agreements are often not the result of arms length negotiations and may financially disfavor and disadvantage the underwritten title companies. Inequities in the underwriting agreement provisions pertaining to indemnification and risk transfer between title insurers and underwritten title companies are not consistent with regulatory efforts to limit such transfers of liability to the smaller, less capitalized underwritten title companies.

For at least the past twenty years, the California Department of Insurance ("CDI") has limited the exposure of underwritten title company losses in underwriting agreements with their title insurers to a maximum of five thousand dollars (\$5,000), although no regulation has ever been promulgated to implement this long-standing rule. Promulgation of this proposed title regulation is intended to continue the existing, long standing CDI position limiting the contractual shifting of responsibility for losses between title insurers and their underwritten title company agents to five thousand dollars (\$5,000) per policy. Further, the CDI has over the years, consistent with California law permitted exceptions for intentional or willful acts and escrow related losses, which exceptions are also to be included in the proposed regulation. *See Insurance Code section 533.*

The allocation or responsibility and agency relationship between title insurers and underwritten title companies is discussed by the California Supreme court in *Title Insurance Company of Minnesota v. State Board of Equalization* (1992) 4 Cal. 4<sup>th</sup> 715, 14 Cal.Rptr 2d. 822:

"the [title] insurers issue all or some of their title policies through underwritten title companies (sometimes referred to hereafter as "title companies"). Pursuant to a written underwriting agreement with the title insurer, to which those seeking title insurance are not a party, the underwritten title company conducts a title search and examination and prepares a preliminary title report on the conditions under which title insurance would be available. *Acting as the title insurer's agent*, the underwritten title company issues the title insurance policy. . ."

*Id.* at 720, Cal.Rptr at 824 (stipulated facts, *emphasis added*).

The California Supreme Court found there were inconsistencies in the indemnification or risk shifting arrangements between the various title insurers and underwritten title companies in their underwriting agreements. *Id.* The proposed regulation will eliminate those inconsistencies. Pursuant to Insurance Code section 12389 "Authority," the Commissioner of Insurance may promulgate reasonable rules and regulations to

govern the conduct of business of underwritten title companies.

The purpose of the proposed action is to enact a long standing position of the California Department of Insurance ("CDI") to limit the liability of underwritten title companies to indemnify title insurers to five thousand dollars (\$5,000) with some specific exceptions for intentional, willful acts and escrow related losses, which limitation fosters the solvency of underwritten title companies. Further, the proposed action limits the liability that may be transferred from the title insurer, that is generally more highly capitalized and able to bear the loss, to the underwritten title company agent that is generally less able to bear the loss. Furthermore, to the extent that shifting of liability to the underwritten companies is not limited, a commensurate increase in their capitalization would be required for initial licensing and expansion, thus diminishing market entrance and small business formation and growth within the state. The proposed action also creates an incentive for underwritten title companies to use a duty of care by permitting the transfer of some risk to underwritten title companies.

Towards the achievement of that goal, the proposed regulation establishes the limitations on risk transfer between title insurers and underwritten title companies that may be agreed to by contract. The purposes of Insurance Code section 12389 are to maintain the solvency of underwritten title companies and to protect the public by preventing fraud and requiring fair dealing. The proposed regulation is a reasonable rule to govern the conduct of underwritten title companies that are subject to Insurance Code section 12389.

## EFFECT OF PROPOSED ACTION

The proposed regulations should maintain the status quo for many title insurers and underwritten title companies who have limited their risk transfers to the long-standing five thousand dollar (\$5,000) limitation. The proposed regulations may have the effect of requiring other title insurers and the underwritten title companies to modify their contractual arrangements to limit the indemnification or transfer of liability to five thousand dollars (\$5,000) with specified exceptions.

The proposed new regulation sets forth the authority pursuant to which they are to be promulgated and will be immediately effective upon adoption. This new section clarifies and makes specific the rule that will govern the conduct of business of underwritten title companies and their title insurers.

The proposed new regulation defines the terms "loss" and "contract" as reasonably necessary to make specific the provisions of Insurance Code section 12389. By defining these terms the new proposed regulation will

clarify and provide a consistent application of the proposed regulation. An express definition of these terms in the proposed section should facilitate compliance by underwritten title companies with Insurance Code sections 12389 and 12389.1 and should also facilitate solvency of the underwritten title companies. The proposed regulations should also eliminate confusion that may exist as to the amount of indemnification or risk that may be transferred by title insurers to underwritten title companies.

#### **MANDATES ON LOCAL AGENCIES OR SCHOOL DISTRICTS**

The proposed regulations do not impose any mandate on local agencies or school districts. There are no costs to local agencies or school districts for which Part 7 (commencing with Section 17500) of Division 4 of the Government Code would require reimbursement.

#### **COST OR SAVINGS TO STATE AGENCIES, LOCAL AGENCIES OR SCHOOL DISTRICTS OR IN FEDERAL FUNDING**

The Commissioner has determined that the proposed regulations will result in no cost or savings to any state agency, no cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code, no other nondiscretionary cost or savings imposed on local agencies, and no cost or savings in federal funding to the State.

#### **ECONOMIC IMPACT ON BUSINESS AND THE ABILITY OF CALIFORNIA BUSINESSES TO COMPETE**

The Commissioner has made an initial determination that the adoption of the proposed regulation will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

#### **POTENTIAL COST IMPACT ON PRIVATE PERSONS OR BUSINESSES**

The proposed regulations implement existing regulatory requirements; therefore the proposed regulations may, but should not have a significant impact on many of the title businesses currently operating in California. The Commissioner is not aware of any cost impacts that

a representative private person or business would necessarily incur in reasonable compliance with the proposed action. The proposed regulations could require some title insurers and underwritten title companies to amend their existing underwriting agreements to limit the liability transferred. Some title insurers and underwritten title companies may need to develop new business risk assessments, or may need to re-engineer their businesses plans to comply with these regulations. We estimate that up front business costs for compliance with these regulations could cost these companies up to ten thousand dollars (\$10,000) (e.g., costs of actuarial consultants, legal advice, *etc.*) while ongoing costs associated with compliance should be offset by other contractual arrangements.

#### **EFFECT ON JOBS AND BUSINESSES IN CALIFORNIA**

The Commissioner is required to assess any impact the regulations may have on the creation or elimination of jobs in the State of California, the creation of new businesses, the elimination of new businesses, and the expansion of businesses currently operating in the state.

The proposed regulations implement existing statutes and should not have a significant impact on jobs and formation of new business in California. It is possible and certainly anticipated that the proposed action could have an overall neutral or positive impact on jobs and businesses in California to the extent that it enhances the continued operation of underwritten title companies, all of whom are domestic. As noted, to the extent that shifting of liability to the underwritten companies is not limited, a commensurate increase in their capitalization would be required for initial licensing and expansion, thus diminishing market entrance and small business formation and growth within the state. Therefore, in the Commissioner's assessment, this regulatory action is likely to enhance competition which could result in either the increase or elimination of businesses and jobs in California. If there are a loss of jobs and businesses, the extent of such losses should be offset by other improvements in terms of the State's aggregate economic activity. The proposed regulations should not, however, adversely affect new business formation nor significantly impact the expansion of many if not all title businesses already doing business in California.

#### **FINDING OF NECESSITY**

The Commissioner finds that it is necessary for the welfare of the people of the state that the regulations apply to businesses.



## PRESCRIPTIVE STANDARDS VERSUS PERFORMANCE STANDARDS

The Commissioner proposes the adoption of prescriptive standards as defined in Government Code section 11342.590 rather than performance standards as defined in Government Code section 11342.570 because the proposed regulations seek to implement the licensure requirements of the Underwritten Title Company statute, Insurance Code section 12389 *et seq.* and related statutes; however the Commissioner invites alternative proposals including proposals of a performance nature.

## IMPACT ON HOUSING COSTS

The proposed regulations will have no significant effect on housing costs.

## ALTERNATIVES

The Commissioner must determine that no reasonable alternative considered by the Commissioner or that has otherwise been identified and brought to the attention of the Commissioner would be more effective in carrying out the purpose for which this action is proposed or would be as effective and less burdensome to affected private persons than the proposed action, and the Commissioner must consider the substitution of performance standards for prescriptive standards.

## IMPACT ON SMALL BUSINESS

The Commissioner has determined that the proposed amendments will affect small businesses to the extent that it affects underwritten title companies. However, insurance companies, which will also be affected, are by definition not small businesses, pursuant to Paragraph (b)(2) of Government Code section 11342.610. This notice will be mailed to underwritten title companies licensed in California.

## COMPARABILITY AND CONFORMITY WITH FEDERAL LAW

Under current federal law, the regulation of insurance, including title insurance, is primarily the responsibility of the states. However title insurance entities are also subject to federal law specifically the "Real Estate Settlement Procedures Act" or "RESPA." See 12 U.S.C. § 2601 *et seq.* Under federal law, California law in general is not annulled, altered, affected or exempted by RESPA, except to the extent California laws are inconsistent with federal law, and then only to the extent

they are inconsistent and the inconsistency does not provide greater protections for the consumer as specified. See 12 U.S.C. § 2616. The proposed regulations are not inconsistent with applicable federal law.

## TEXT OF REGULATIONS AND STATEMENTS OF REASONS

The Department has prepared an initial statement of reasons that sets forth the reasons for the proposed action. Upon request, the initial statement of reasons will be made available for inspection and copying. Requests for the initial statement of reasons or questions regarding this proceeding should be directed to the contact person listed above. Upon request, the final statement of reasons will be made available for inspection and copying once it has been prepared. Requests for the final statement of reasons should be directed to the contact person listed above.

The file for this proceeding, which includes a copy of the express terms of the proposed regulations, the statement of reasons, the information upon which the proposed action is based, and any supplemental information, including any reports, documentation and other materials related to the proposed action that is contained in the rulemaking file, is available by appointment for inspection and copying at 45 Fremont Street, 24th Floor, San Francisco, California 94105, between the hours of 10:00 a.m. and 4:30 p.m., Monday through Friday.

## AUTOMATIC MAILING

A copy of this notice, including the informative digest, which contains the general substance of the proposed regulations, will automatically be sent to all persons on the Insurance Commissioner's mailing list.

## WEBSITE POSTINGS

Documents concerning this proceeding are available on the Department's website. To access them, go to <http://www.insurance.ca.gov>. Find at the right hand side of the page the heading 'QUICK LINKS.' The third item in this column under this heading is 'For Insurers'; on the drop-down menu for this item, select 'Legal Information.' When the 'INSURERS: LEGAL INFORMATION' screen appears, click the third item in the list of bulleted items near the top of the page: 'Proposed Regulations.' The 'INSURERS: PROPOSED REGULATIONS' screen will be displayed. Select the only available link: 'Search for Proposed Regulations.' Then, when the 'Search or Browse for Documents for Proposed Regulations' screen appears, you may choose to find the documents either by conducting a search or by browsing for them by name.

To search, enter “REG–2009–00019” (the Department’s regulation file number for these regulations) in the search field. Alternatively, search using as your search term the Office of Administrative Law’s notice file number assigned to the regulations (“Z2009–0811–03”), or search by keyword or term (“Underwritten Title Company Liability Limitation,” for example, or “underwriting agreement”). Then, click on the ‘Submit’ button to display links to the various filing documents.

To browse, click on the ‘Browse All Regulations’ button near the bottom of the screen. A list of the names of regulations for which documents are posted will appear. Find in the list the ‘Limitation on Underwritten Title Company Liability’ link, and click it. Links to the documents associated with these regulations will then be displayed.

### MODIFIED LANGUAGE

If the regulations adopted by the Department differ from those which have originally been made available but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Interested persons should request a copy of these regulations prior to adoption from the contact person listed above.

## TITLE 11. COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING

Date: August 21, 2009

Bulletin: No. 2009–09

Subject: **Notice of Proposed Regulatory Action — *Training and Testing Specifications for Peace Officer Basic Courses Regulations 1005, 1007, and 1008***

At the July 2009 meeting, the Commission approved proposed amendments to Learning Domains throughout the *Training and Testing Specifications for Peace Officer Basic Courses* publication, incorporated by reference into POST Regulations 1005, 1007, and 1008.

The proposed changes include:

- Removed mid-term exam which was inadvertently included in the Regular Basic Course (RBC) and the Specialized Investigators’ Basic Course (SIBC) on the Training and Testing Specifications for Learning Domain (LD) 11.
- Inserted X’s to SIBC for the exercise tests which were inadvertently left out and should be added to the Training and Testing Specifications for LD 35.

- Added LD 39 to the test administration and exam review hours inadvertently left off the Minimum Content and Hourly Requirements for Module II.
- Added new language to provide clarity regarding the POST–Constructed Comprehensive Module II End-of–Course Proficiency Test on the Minimum Content and Hourly Requirements for Module II.
- Added LD’s on the Minimum Content and Hourly Requirements for RBC, Module I, and SIBC to further clarify which LD’s require scenario testing.

The attached notice describes the proposed changes and includes an invitation for written input on this proposal, the deadline for written comments, and information about requesting a public hearing. The following related information is available on the POST website at [www.post.ca.gov/RegulationNotices/RegulationNotices.asp](http://www.post.ca.gov/RegulationNotices/RegulationNotices.asp):

- POST Bulletin and Notice of Proposed Regulatory Action
- Text of Proposed Regulatory Action
- Initial Statement of Reasons

Please direct inquiries about this proposed regulatory action to Cheryl Smith, Commission on POST, 1601 Alhambra Boulevard, Sacramento, CA 95816–7083, by email at [Cheryl.Smith@post.ca.gov](mailto:Cheryl.Smith@post.ca.gov), by telephone at (916) 227–0544, or by FAX at (916) 227–6932.

## NOTICE OF PROPOSED REGULATORY ACTION

### Amend and Update the Training and Testing Specifications for Peace Officer Basic Courses Regulations 1005, 1007, and 1008

Notice is hereby given that the Commission on Peace Officer Standards and Training (POST) proposes to amend regulations in Chapter 2 of Title 11 of the California Code of Regulations as described below in the Informative Digest. A public hearing is not scheduled. Pursuant to Government Code § 11346.8, any interested person, or his/her duly authorized representative, may request a public hearing. POST must receive the written request no later than 15 days prior to the close of the public comment period.

**Public Comments Due by October 5, 2009, at 5:00 p.m.**

Notice is also given that any interested person, or authorized representative, may submit written comments relevant to the proposed regulatory action by fax at (916) 227–6932 or by letter to the:

Commission on POST  
1601 Alhambra Boulevard  
Sacramento, CA 95816–7083

Following the close of the public comment period, the Commission may adopt the proposal substantially as described below or may modify the original proposal with sufficiently related changes. With the exception of technical or grammatical changes, the full text of a modified proposal will be available for 15 days prior to its adoption from the person designated in this notice as the contact person. The Commission will also mail the full text to persons who submit written comments related to the proposal or who have requested notification of any changes.

#### **Authority and Reference**

This proposal is made pursuant to the authority vested by Penal Code § 13503 — POST powers and § 13506 — POST authority to adopt regulations. This proposal is intended to interpret, implement, and make specific Penal Code §13503(e) — POST authority to develop and implement programs to increase the effectiveness of law enforcement, including programs involving training and education courses.

#### **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

At its July 23, 2009 meeting, the Commission approved proposed amendments to Learning Domains throughout the *Training and Testing Specifications for Peace Officer Basic Courses* publication. The proposed changes included:

- Update Training & Testing Specification curriculum as part of an ongoing review

All changes to academy curriculum begin with recommendations from law enforcement practitioners or in some cases via legislative mandates. POST then facilitates meetings attended by curriculum advisors and subject matter experts who provide recommended changes to existing academy curriculum. The recommendations are forwarded to a Test Review Panel, comprised of academy administrators who identify testing questions and pass point thresholds for the new curriculum. Once the Test Review Panel has reviewed the recommendations, they are submitted for review by all academies at the Basic Course Consortium quarterly meetings facilitated by POST. The completed work of all committees is presented to the POST Commission at large for final review and adoption. Upon adoption of the proposed amendments, academies and course presenters will be required to teach and test to the updated curriculum. The proposed effective date is January 1, 2010.

#### **Local Mandate**

This proposal does not impose a mandate on local agencies or school districts.

#### **Fiscal Impact Estimates**

This proposal does not impose costs on any local agency or school district for which reimbursement would be required pursuant to Part 7 (commencing with § 17500) of the Government Code, Division 4. This proposal does not impose other nondiscretionary cost or savings on local agencies. This proposal does not result in any cost or savings in federal funding to the state.

#### **Costs or Savings to State Agencies**

POST anticipates no additional costs or savings to state agencies.

#### **Business Impact/Small Businesses**

The Commission has made an initial determination that this regulatory proposal would have no significant statewide adverse economic impact directly affecting California businesses, including the ability of California businesses to compete with businesses in other states. The proposal does not affect small businesses, as defined by Government Code §11342.610, because the Commission sets selection and training standards for law enforcement and does not have an impact on California businesses, including small businesses.

#### **Assessment Regarding Effect on Jobs/Businesses**

The Commission has determined that this regulatory proposal will not have any impact on the creation or elimination of jobs and will not result in the creation of new businesses, the elimination of existing businesses, or the expansion of businesses in the State of California.

#### **Cost Impact on Representative Private Persons or Businesses**

The Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

#### **Effect on Housing Costs**

None

#### **Alternatives**

The Commission must determine that no reasonable alternative considered by the agency, or otherwise identified and brought to the agency's attention, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective as, and less burdensome to, affected private persons than the proposed action.

#### **Contact Person**

Please direct inquiries or written comments about the proposed regulatory action to the following:

Cheryl Smith  
Commission on POST  
1601 Alhambra Boulevard  
Sacramento, CA 95816-7083  
(916) 227-0544 or [cheryl.smith@post.ca.gov](mailto:cheryl.smith@post.ca.gov)  
FAX (916) 227-6932

or

Patti Kaida  
Commission on POST  
1601 Alhambra Boulevard  
Sacramento, CA 95816-7083  
(916) 227-4847 or [patti.kaida@post.ca.gov](mailto:patti.kaida@post.ca.gov)  
FAX (916) 227-5271

**Amend**

- § 1035.3 Licensed Timber Operator Responsibilities**
- § 1090.12 Licensed Timber Operator Responsibilities**
- § 1092.14 Licensed Timber Operator Responsibilities**

**Text of Proposal**

Individuals may request copies of the exact language of the proposed regulations and of the initial statement of reasons, and the information the proposal is based upon, from the Commission on POST at 1601 Alhambra Boulevard, Sacramento, CA 95816. These documents are also located on the POST website at: <http://www.post.ca.gov/RegulationNotices/RegulationNotices.asp>.

**Availability and Location of the Rulemaking File and the Final Statement of Reasons**

The rulemaking file contains all information upon which POST is basing this proposal and is available for public inspection by contacting the person named above.

To request a copy of the Final Statement of Reasons once it has been prepared, submit a written request to the contact person named above.

**TITLE 14. BOARD OF FORESTRY AND FIRE PROTECTION**

[Published August 21, 2009]

**NOTICE OF PROPOSED RULEMAKING**

**Definition of Employee, 2009**

**Title 14 of the California Code of Regulations (14 CCR)**

The Board of Forestry and Fire Protection (Board) proposes to amend and adopt the regulations of Title 14 of the California Code of Regulations (14 CCR) described below after considering all comments, objections, and recommendations regarding the proposed action.

**Adopt**

- § 1022.4 Licensed Timber Operator Responsibilities**
- § 1022.5 Subcontractors to a Licensed Timber Operator**
- § 1024.6 Employee with Wages as Sole Compensation**

**PUBLIC HEARING**

The Board will hold a public hearing starting at 8:00 a.m., on Wednesday, October 7, 2009, at the Resources Building Auditorium, 1<sup>st</sup> Floor, 1416 Ninth Street, Sacramento, California. At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action described in the *Informative Digest*. The Board requests, but does not require, that persons who make oral comments at the hearing also submit a summary of their statements. Additionally, pursuant to Government Code section 11125.1, any information presented to the Board during the open hearing in connection with a matter subject to discussion or consideration becomes part of the public record. Such information shall be retained by the Board and shall be made available upon request.

**WRITTEN COMMENT PERIOD**

Any person, or authorized representative, may submit written comments relevant to the proposed regulatory action to the Board. The written comment period ends at 5:00 p.m., Monday, October 5, 2009. The Board will consider only written comments received at the Board office by that time (in addition to those written comments received at the public hearing). The Board requests, but does not require, that persons who submit written comments to the Board reference the title of the rulemaking proposal in their comments to facilitate review.

Written comments shall be submitted to the following address:

Board of Forestry and Fire Protection  
Attn: Christopher Zimny  
Regulations Coordinator  
P.O. Box 944246  
Sacramento, CA 94244-2460

Written comments can also be hand delivered to the contact person listed in this notice at the following address:

Board of Forestry and Fire Protection  
Room 1506-14  
1416 9<sup>th</sup> Street  
Sacramento, CA



Written comments may also be sent to the Board via facsimile at the following phone number:

(916) 653-0989

Written comments may also be delivered via e-mail at the following address:

board.public.comments@fire.ca.gov

## AUTHORITY AND REFERENCE

Public Resources Code (PRC) sections 4551 and 4551.5 authorize the Board to adopt such rules and regulations as it determines are reasonably necessary to enable it to implement, interpret or make specific sections 4512, 4513, and 4570-4578 of the Public Resources Code. Reference: Public Resources Code sections 4512, 4513, 4524, 4551, 4551.5, 4527, 4528.5, and 4570-4578.

## INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Public Resources Code (PRC) §§ 4526.5 and 4571 provide that a Licensed Timber Operator (LTO) is a timber operator who is licensed and conducts timber operations. These and other PRC sections except a person who is engaged in timber operations as an employee with wages as their sole compensation from the need for a timber operator's license. Recent legal rulings have indicated that the concept of ". . . employee with wages as his sole compensation" is not a defined term sufficient for use in Timber Operator Licensing denial actions and for guidance to the regulated public. The proposed regulation provides an explicit definition for an "employee" as it relates to a licensed timber operator to improve the clarity of the employment characteristics that define an employee. The proposed regulation further consolidates and clarifies the responsibilities of an LTO and deletes redundant Forest Practices Rules that describe the responsibilities of the LTO.

## SPECIFIC PURPOSE OF THE REGULATION

The proposed amendments provide guidance for the regulated public, Department and Administrative Law Judges on the characteristics of an employment arrangement that define an "employee" thereby exempting the employee from needing a timber operations license to conduct timber operations.

The proposed regulation also clarifies licensed timber operator (LTO) responsibilities related to those who

are "subcontractors" to the LTO. Finally the proposed regulation deletes redundant regulatory sections that specify LTO responsibilities.

The proposed adoption of 14 CCR § 1022.4 and 1022.5 consolidates the LTO responsibilities contained in other subsections for the FPRs into a single location in the FPRs. It also contains clarifying language on the responsibilities relative to subcontractors of the LTO.

The proposed adoption of 14 CCR § 1024.6 explicitly defines an "employee" and the characteristics of an employee.

The proposed adoption of 14 CCR § 1035.3, 1090.12, and 1092.14 deletes redundant regulatory sections that specify LTO responsibilities. The LTO responsibilities deleted from these sections are reinserted in 14 CCR 1022.4

## DISCLOSURES REGARDING THE PROPOSED ACTION

The Board has determined the proposed action will have the following effects:

- Mandate on local agencies and school districts: None are known.
- Costs or savings to any State agency: None are known.
- Cost to any local agency or school district which must be reimbursed in accordance with the applicable Government Code (GC) sections commencing with GC 17500: None are known.
- Other non-discretionary cost or savings imposed upon local agencies: None are known.
- Cost or savings in federal funding to the State: None are known.
- Significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: None are known.
- Potential cost impact on private persons or directly affected businesses: The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- Effect on small business: None. The Board has determined that the proposed amendments will not affect small business because there are no costs related to the regulation.
- Significant effect on housing costs: None are known.
- Adoption of these regulations will not create or eliminate jobs within California.

- Adoption of these regulations will not: (1) create new businesses or eliminate existing businesses within California; or (2) affect the expansion of businesses currently doing business within California.

The proposed Rules do not conflict with, or duplicate Federal regulations.

#### **BUSINESS REPORTING REQUIREMENT**

The regulation does not require a report, which shall apply to businesses.

#### **CONSIDERATION OF ALTERNATIVES**

In accordance with Government Code section 11346.5(a)(13), the Board must determine that no reasonable alternative it considers or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

#### **CONTACT PERSON**

Requests for copies of the proposed text of the regulations, the *Initial Statement of Reasons*, modified text of the regulations and any questions regarding the substance of the proposed action may be directed to:

Board of Forestry and Fire Protection  
Attn: Christopher Zimny  
Regulations Coordinator  
P.O. Box 944246  
Sacramento, CA 94244-2460  
Telephone: (916) 653-9418

The designated backup person in the event Mr. Zimny is not available is Doug Wickizer, California Department of Forestry and Fire Protection, at the above address and phone (916) 653-5602.

#### **AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS**

The Board has prepared an *Initial Statement of Reasons* providing an explanation of the purpose, background, and justification for the proposed regulations. The statement is available from the contact person on request.

When the *Final Statement of Reasons* has been prepared, the statement will be available from the contact person on request.

A copy of the express terms of the proposed action, using UNDERLINE to indicate an addition to the California Code of Regulations and ~~STRIKETHROUGH~~ to

indicate a deletion, is also available from the contact person named in this notice.

The Board will have the entire rulemaking file, including all information considered as a basis for this proposed regulation, available for public inspection and copying throughout the rulemaking process at its office at the above address. All of the above referenced information is also available on the CDF web site at:

[http://www.fire.ca.gov/BOF/board/board\\_proposed\\_rule\\_packages.html](http://www.fire.ca.gov/BOF/board/board_proposed_rule_packages.html)

#### **AVAILABILITY OF CHANGED OR MODIFIED TEXT**

After holding the hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If the Board makes modifications which are sufficiently related to the originally proposed text, it will make the modified text—with the changes clearly indicated—available to the public for at least 15 days before the Board adopts the regulations as revised. Notice of the comment period on changed regulations, and the full text as modified, will be sent to any person who:

- a) testified at the hearings,
- b) submitted comments during the public comment period, including written and oral comments received at the public hearing, or
- c) requested notification of the availability of such changes from the Board of Forestry and Fire Protection.

Requests for copies of the modified text of the regulations may be directed to the contact person listed in this notice. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

### **TITLE 14. BOARD OF FORESTRY AND FIRE PROTECTION**

**[Published August 21, 2009]**

#### **NOTICE OF PROPOSED RULEMAKING**

#### **Fire Tools Civil Penalties, 2009**

#### **Title 14 of the California Code of Regulations Article 8 Fire Protection**

The Board of Forestry and Fire Protection (Board) proposes to amend and adopt the regulations of Title 14 of the California Code of Regulations (14 CCR) de-

scribed below after considering all comments, objections, and recommendations regarding the proposed action.

**Amend**

**§ 918 [938, 958]. Fire Protection.**

**PUBLIC HEARING**

The Board will hold a public hearing starting at 8:00 a.m., on Wednesday, October 7, 2009, at the Resources Building Auditorium, 1<sup>st</sup> Floor, and 1416 Ninth Street, Sacramento, California. At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action described in the *Informative Digest*. The Board requests, but does not require, that persons who make oral comments at the hearing also submit a summary of their statements. Additionally, pursuant to Government Code section 11125.1, any information presented to the Board during the open hearing in connection with a matter subject to discussion or consideration becomes part of the public record. Such information shall be retained by the Board and shall be made available upon request.

**WRITTEN COMMENT PERIOD**

Any person, or authorized representative, may submit written comments relevant to the proposed regulatory action to the Board. The written comment period ends at 5:00 p.m., Monday, October 5, 2009. The Board will consider only written comments received at the Board office by that time (in addition to those written comments received at the public hearing). The Board requests, but does not require, that persons who submit written comments to the Board reference the title of the rulemaking proposal in their comments to facilitate review.

Written comments shall be submitted to the following address:

Board of Forestry and Fire Protection  
Attn: Christopher Zimny  
Regulations Coordinator  
P.O. Box 944246  
Sacramento, CA 94244-2460

Written comments can also be hand delivered to the contact person listed in this notice at the following address:

Board of Forestry and Fire Protection  
Room 1506-14  
1416 9<sup>th</sup> Street  
Sacramento, CA

Written comments may also be sent to the Board via facsimile at the following phone number:

(916) 653-0989

Written comments may also be delivered via e-mail at the following address:

board.public.comments@fire.ca.gov

**AUTHORITY AND REFERENCE**

Public Resources Code (PRC) sections 4551 and 4551.5 authorize the Board to adopt such rules and regulations as it determines are reasonably necessary to enable it to implement, interpret or make specific sections 4423, 4427, 4428, 4429, 4431, and 4442 of the Public Resources Code. Reference: Public Resources Code sections 4423, 4427, 4428, 4429, 4431, 4442, 4512, 4513, 4551, and 4551.5.

**INFORMATIVE DIGEST/POLICY STATEMENT  
OVERVIEW**

The proposed regulation adds the existing terms of conditions for conformance with fire (tool) prevention laws for active timber operations in PRCs §§ 4427, 4428, 4429, 4431, and 4442 to the Forest Practice Rules under section 14 CCR 918 [938, 958]. The effect of the proposal is to allow the entire set of civil enforcement actions available to the California Department of Forestry and Fire Protection under the Forest Practice Act to be applied to violations of the fire tool PRCs.

**SPECIFIC PURPOSE OF THE REGULATION**

The proposed regulation adds the existing terms and conditions of PRCs §§ 4427, 4428, 4429, 4431, and 4442 to the Forest Practice Rules under section 14 CCR 918 [938, 958].

This amendment allows the use of the Civil Penalty regulations in 14 CCR 1057 et seq. pursuant to PRC 4601 et seq. to apply to fire tool requirement violations.

**DISCLOSURES REGARDING  
THE PROPOSED ACTION**

The Board has determined the proposed action will have the following effects:

- Mandate on local agencies and school districts: None are known.
- Costs or savings to any State agency: None are known.
- Cost to any local agency or school district which must be reimbursed in accordance with the applicable Government Code (GC) sections commencing with GC 17500: None are known.

- Other non-discretionary cost or savings imposed upon local agencies: None are known.
- Cost or savings in federal funding to the State: None are known.
- Significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: None are known.
- Potential cost impact on private persons or directly affected businesses: The Board is not aware of cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- Effect on small business: None. The Board has determined that the proposed amendments will not affect small business because there are no costs related to the regulation.
- Significant effect on housing costs: None are known.
- Adoption of these regulations will not create or eliminate jobs within California.
- Adoption of these regulations will not: (1) create new businesses or eliminate existing businesses within California; or (2) affect the expansion of businesses currently doing business within California.

The proposed Rules do not conflict with, or duplicate Federal regulations.

#### BUSINESS REPORTING REQUIREMENT

The regulation does not require a report, which shall apply to businesses.

#### CONSIDERATION OF ALTERNATIVES

In accordance with Government Code 11346.5(a)(13), the Board must determine that no reasonable alternative it considers or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

#### CONTACT PERSON

Requests for copies of the proposed text of the regulations, the *Initial Statement of Reasons*, modified text of the regulations and any questions regarding the substance of the proposed action may be directed to:

Board of Forestry and Fire Protection  
Attn: Christopher Zimny  
Regulations Coordinator  
P.O. Box 944246  
Sacramento, CA 94244-2460  
Telephone: (916) 653-9418

The designated backup person in the event Mr. Zimny is not available is Doug Wickizer, California Department of Forestry and Fire Protection, at the above address and phone (916) 653-5602.

#### AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Board has prepared an *Initial Statement of Reasons* providing an explanation of the purpose, background, and justification for the proposed regulations. The statement is available from the contact person on request.

When the *Final Statement of Reasons* has been prepared, the statement will be available from the contact person on request. A copy of the express terms of the proposed action, using UNDERLINE to indicate an addition to the California Code of Regulations and ~~STRIKETHROUGH~~ to indicate a deletion, is also available from the contact person named in this notice.

The Board will have the entire rulemaking file, including all information considered as a basis for this proposed regulation, available for public inspection and copying throughout the rulemaking process at its office at the above address. All of the above referenced information is also available on the CDF web site at:

[http://www.fire.ca.gov/BOF/board/board\\_proposed\\_rule\\_packages.html](http://www.fire.ca.gov/BOF/board/board_proposed_rule_packages.html)

#### AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If the Board makes modifications which are sufficiently related to the originally proposed text, it will make the modified text—with the changes clearly indicated—available to the public for at least 15 days before the Board adopts the regulations as revised. Notice of the comment period on changed regulations, and the full text as modified, will be sent to any person who:

- a) testified at the hearings,
- b) submitted comments during the public comment period, including written and oral comments received at the public hearing, or
- c) requested notification of the availability of such changes from the Board of Forestry and Fire Protection.



Requests for copies of the modified text of the regulations may be directed to the contact person listed in this notice. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

## GENERAL PUBLIC INTEREST

### DEPARTMENT OF FISH AND GAME

#### Department of Fish and Game — Public Interest Notice

For Publication August 21, 2009  
CESA CONSISTENCY DETERMINATION  
REQUEST FOR  
Long-term Operations of the Central Valley Project  
and State Water Project

The Department of Fish and Game (Department) received a notice on August 5, 2009 that the Department of Water Resources (DWR) proposes to rely on a consultation between federal agencies to carry out a project that may adversely affect species protected by the California Endangered Species Act (CESA). This project consists of the operation of the Central Valley Project and State Water Project to divert, store, and convey water until the year 2030 (Project). Project activities will result in impacts to Sacramento River winter-run Chinook salmon and Central Valley spring run Chinook salmon (*Oncorhynchus tshawytscha*), and is likely to destroy or adversely modify designated critical habitats.

The National Oceanic and Atmospheric Administration's National Marine Fisheries Service (NMFS) issued a "jeopardy" federal biological opinion (2008/09022)(BO), reasonable and prudent alternative (RPA), and incidental take statement (ITS) to the U.S. Bureau of Reclamation (Bureau) on June 4, 2009 which considered the effects of the project on the Federally and state endangered Sacramento River winter-run Chinook salmon and the Federally and state threatened Central Valley spring run Chinook salmon. Pursuant to California Fish and Game Code Section 2080.1, DWR is requesting a determination that the BO and ITS, which require implementation of the RPA, are consistent with CESA for purposes of the proposed Project. If the Department determines the BO and ITS are consistent with CESA for the proposed Project, DWR will not

be required to obtain an incidental take permit under Fish and Game Code section 2081 for the Project.

### DEPARTMENT OF FISH AND GAME

#### Department of Fish and Game — Public Interest Notice

For Publication August 21, 2009  
CESA CONSISTENCY DETERMINATION  
REQUEST FOR  
Meriam Park Project  
Butte County

The Department of Fish and Game (Department) received a notice on August 10, 2009 that the City of Chico (City) proposes to rely on a consultation between federal agencies to carry out a project that may adversely affect species protected by the California Endangered Species Act (CESA). This project consists of the construction of 2,300 dwelling units, 250,000 feet of retail space, and 485,000 square feet of commercial space, and three bridge crossings on 274 acres in south-east Chico, Butte County (Project). Project activities associated with staging and construction will result in permanent destruction of 3.6 acres of habitat suitable for the giant garter snake (*Thamnophis gigas*), and temporary impacts to approximately 5.69 acres of giant garter snake habitat. Additionally, project activities will directly affect 0.46 acre of occupied Butte County meadowfoam (*Limnanthes floccose* ssp. *Californica*) habitat.

The U.S. Fish and Wildlife Service (Service) issued a "no jeopardy" federal biological opinion (81420-2008-F-0104-2)(BO) and incidental take statement (ITS) to the U.S. Army Corps of Engineers (USACE) on February 15, 2007 which considered the effects of the project on the Federally and State endangered Butte County meadowfoam. The BO also serves to append the Project to the Service's November 13, 1992, *Programmatic Consultation for U.S. Army Corps of Engineers 404 Permitted Projects with Relatively Small Effects on the Giant Garter Snake* (Service file number 1-1-97-F-0149).

Pursuant to California Fish and Game Code Section 2080.1, the City is requesting a determination that the BO and ITS are consistent with CESA for purposes of the proposed Project. If the Department determines the BO and ITS are consistent with CESA for the proposed Project, the City will not be required to obtain an incidental take permit under Fish and Game Code section 2081 for the Project.

## DEPARTMENT OF FISH AND GAME

Department of Fish and Game —

Public Interest Notice

For Publication August 21, 2009

### PROPOSED RESEARCH ON FULLY PROTECTED SPECIES

#### Presence/Absence Surveys for Limestone Salamander

The Department of Fish and Game (“Department”) received a proposal in August 2009 from Dr. Stephen Nyman, requesting authorization to conduct presence/absence surveys for the limestone salamander (*Hydromantes brunus*), a Fully Protected amphibian, as part of the Federal Energy Regulatory Commission (FERC) relicensing of the Merced Irrigation District’s (“Licensee”) Merced River Hydroelectric Project (“Project”). The study proposal, which has been filed with FERC for approval, follows a series of meetings with federal and state agencies, local governments, Indian tribes, non-governmental organizations (NGO), businesses and unaffiliated members of the public that might actively participate in the Project relicensing. Study proposal development meetings included the active participation of the U.S. Dept. of the Interior — Bureau of Land Management (BLM). The study proposal is posted on the Merced Irrigation District Public Relicensing Website (<http://www.eurekasw.com/MID/default.aspx>).

The applicant is required to have a Scientific Collecting Permit (SCP) to search for a protected species of amphibian. Permit conditions require that the holder of an SCP obtain special authorization from the Department for research on Fully Protected species.

Dr. Nyman is planning to survey for limestone salamanders in Merced and Mariposa Counties, following consultation with the Department and BLM regarding the need for targeted survey of specific locations, to further characterize habitat suitability, determine whether a Project nexus exists at these locations, and determine whether limestone salamander occurs at these locations. If the limestone salamander is encountered at any sites, Dr. Nyman will note the number of individuals, the developmental stage, and the sex of the individuals based on external physical characteristics. No marking or tissue sampling would be conducted on the individuals. The survey technique would involve carefully searching under surface objects, such as rocks and logs, to locate limestone salamanders. The techniques that Dr. Nyman is proposing are commonplace in field biology, and no adverse effects on individuals or populations are anticipated. Data obtained from these surveys

may be used to identify Project operation and maintenance (“O&M”) activities in those areas that typically occur and have a potential to adversely affect the population. Study results may be used in the development of Project facilities and/or activities the Licensee will undertake as a condition of the new license for the purpose of protecting or mitigating impacts to limestone salamander that would result from continued Project O&M, or for the purpose of enhancing limestone salamander habitat that would be affected by continued Project O&M.

The Department intends to issue, under specified conditions, a Memorandum of Understanding (MOU) or other special permit that would authorize the applicant to carry out the proposed activities. Additional locations and/or methods may be authorized by the Department for future projects.

Pursuant to California Fish and Game Code (FGC) Section 5050(a)(1), the Department may authorize take of Fully Protected amphibians after 30 days notice has been provided to affected and interested parties through publication of this notice. If the Department determines that the proposed research is consistent with the requirements of FGC Section 5050 for take of Fully Protected amphibians, it would issue the authorization on or after September 21, 2009, for an initial term of two years. Contact: Wildlife Branch, Nongame Wildlife Program, 1812 Ninth Street, Sacramento, CA 95811, Attn.: Betsy Bolster.

## FAIR POLITICAL PRACTICES COMMISSION

### NOTICE OF CORRECTION

The Publication of Notice of Adoption of 2 Cal. Code Regs. Sections 18603 and 18603.1, was submitted by the Fair Political Practices Commission, to the Office of Administrative Law on July 28, 2009, for publication on August 7, 2009 (Notice File Number Z-2009-0728-03).

The last sentence of the first paragraph of the Notice has a typographical error as to the date by which “written comments must be received at the Commission offices.” The date, “**September 8, 2008**” should be “**September 8, 2009**.”

Any inquiries regarding this correction should be made to Virginia Latteri-Lopez, Regulations Coordinator, Fair Political Practices Commission, 428 J Street, Suite 800, Sacramento, CA 95814; telephone (916) 322-5660 or email [vlatteri-lopez@fppc.ca.gov](mailto:vlatteri-lopez@fppc.ca.gov).

**OFFICE OF ENVIRONMENTAL  
HEALTH HAZARD ASSESSMENT**

**California Environmental Protection Agency  
Office of Environmental Health  
Hazard Assessment  
Notice to Interested Parties**

**August 21, 2009**

**ANNOUNCEMENT OF PUBLICATION  
OF THE FINAL  
PUBLIC HEALTH GOAL FOR  
1,2,3-TRICHLOROPROPANE  
IN DRINKING WATER**

The Office of Environmental Health Hazard Assessment (OEHHA) within the California Environmental Protection Agency is announcing the availability of the final technical support document for the Public Health Goal (PHG) for the solvent 1,2,3-trichloropropane in drinking water. This document establishes a PHG for 1,2,3-trichloropropane of 0.0007 parts per billion, versus the current Notification Level of 0.005 ppb, set in 2005. The PHG is based on an updated cancer potency calculation. The first draft of the revised document was posted on the OEHHA Web site ([www.oehha.ca.gov](http://www.oehha.ca.gov)) on September 14, 2007 and a one-day public workshop was held on October 9, 2007 to discuss it. OEHHA follows the requirements set forth in Health and Safety Code, Sections 57003(a) and 116365, for conducting the workshop and obtaining public input. A second draft of the PHG document was posted on the OEHHA Web site on February 6, 2009 for a 30-day public review and scientific comment period. OEHHA has now finalized the document after considering all comments received and making changes as needed. The final PHG document and responses to major comments are posted on the OEHHA Web site ([www.oehha.ca.gov/water/phg/index.html](http://www.oehha.ca.gov/water/phg/index.html)).

The PHG technical support documents provide information on the health effects of contaminants in drinking water. The PHG is a level of drinking water contaminant at which adverse health effects are not expected to occur from a lifetime of exposure. The California Safe Drinking Water Act of 1996<sup>1</sup> requires OEHHA to develop PHGs based exclusively on public health considerations.<sup>2</sup> PHGs published by OEHHA are considered by the California Department of Public Health in setting drinking water standards (Maximum Contaminant Levels, or MCLs).<sup>3</sup>

<sup>1</sup> Codified at Health and Safety Code, section 116270 et seq.

<sup>2</sup> Health and Safety Code section 116365(c)

<sup>3</sup> Health and Safety Code section 116365(a) and (b)

If you would like to receive further information on this announcement or have questions, please contact our office at (510) 622-3200 or the address below.

Michael Baes ([mbaes@oehha.ca.gov](mailto:mbaes@oehha.ca.gov))  
Pesticide and Environmental Toxicology Branch  
Office of Environmental Health Hazard Assessment  
California Environmental Protection Agency  
1515 Clay St., 16th floor  
Oakland, California 94612  
Att: PHG project.

**OFFICE OF ENVIRONMENTAL  
HEALTH HAZARD ASSESSMENT**

**California Environmental Protection Agency  
Office of Environmental Health  
Hazard Assessment  
Notice to Interested Parties**

**August 21, 2009**

**ANNOUNCEMENT OF FIRST  
PUBLIC COMMENT PERIOD AND  
WORKSHOP**

**Draft Technical Support Document on  
Proposed Public Health Goal for  
Hexavalent Chromium in Drinking Water**

The Office of Environmental Health Hazard Assessment (OEHHA) within the California Environmental Protection Agency is announcing the availability of the draft technical support document for the proposed Public Health Goal (PHG) for hexavalent chromium in drinking water. This draft document is a new risk assessment, culminating a long process of evaluation of oral toxicity of this chemical. A PHG of 0.06 mg/L or 0.06 parts per billion (ppb) is proposed for hexavalent chromium in drinking water, based on tumor incidence data from rodent cancer bioassays. The draft document is posted on the OEHHA Web site ([www.oehha.ca.gov](http://www.oehha.ca.gov)). OEHHA is soliciting comments on the draft report during a 45-day comment period. The Office will also hold a public workshop on October 19, 2009, at the Elihu Harris Building, 1515 Clay Street, Oakland, 94612, Room 1, 10 a.m.–12 noon, or until business is concluded. OEHHA follows the requirements set forth in Health and Safety Code Sections 57003(a) and 116365 for conducting the workshop and receiving public input.

Written comments must be received at the OEHHA address below by 5:00 p.m. on October 19, 2009, to be considered during this document revision period. The workshop is provided to encourage a dialogue between OEHHA scientists and the public, to discuss the scientific basis of the proposed PHG, and to receive comments. Following the workshop, OEHHA will evaluate all the comments received, revise the document as appropriate, and make it available for another 30-day comment period. After any subsequent revisions, the final document will be posted on our Web site along with responses to the major comments from the public at the workshop and during the public review and scientific comment periods.

The PHG technical support documents provide information on the health effects of contaminants in drinking water. The PHG is a level of drinking water contaminant at which adverse health effects are not expected to occur from a lifetime of exposure. The California Safe Drinking Water Act of 1996<sup>1</sup> requires OEHHA to develop PHGs based exclusively on public health considerations.<sup>2</sup> PHGs published by OEHHA are considered by the California Department of Public Health in setting drinking water standards (Maximum Contaminant Levels, or MCLs).<sup>3</sup>

If you would like to receive further information on this announcement or have questions, please contact our office at (510) 622-3170 or the address below.

Mr. Michael Baes (mbaes@oehha.ca.gov)  
Pesticide and Environmental Toxicology Branch  
Office of Environmental Health Hazard Assessment  
California Environmental Protection Agency  
1515 Clay St., 16th floor  
Oakland, California 94612

Attention: PHG Project

## RULEMAKING PETITION DECISIONS

### STRUCTURAL PEST CONTROL BOARD

July 31, 2009

Office of Administrative Law  
300 Capitol Mall, Suite 1250  
Sacramento, CA 95814

<sup>1</sup> Codified at Health and Safety Code, section 116270 et seq.

<sup>2</sup> Health and Safety Code section 116365(c)

<sup>3</sup> Health and Safety Code section 116365(a) and (b)

RE: Petition to Amend Section 1991 of Title 16 of the California Code of Regulations

Dear Office of Administrative Law:

The Structural Pest Control Board (Board) received a letter from Mark Maxwell of Key Termite and Pest Control requesting a change in the shower inspection procedure as set forth in section 1991 of title 16 of California Code of Regulations. In an abundance of caution, the Board treated the request as a petition to amend its regulations and set the matter for consideration at its July 23-24, 2009, meeting. Mr. Maxwell suggested the Board's current regulatory procedures may create 'false positive' results whereby showers that are constructed and installed properly may fail the Board's prescribed test.

At its July 24, 2009, meeting, the Board considered the petition, and consistent with the provisions of section 11340.7 of the Government Code, referred the matter to its Technical Advisory Committee (Committee) for analysis and review. The findings of the Committee shall be submitted to the Board for consideration.

The reasons for the Board's actions are as follows:

- 1) The Board's regulatory test procedures may be inconsistent with the Uniform Plumbing Code or other applicable building industry standards.
- 2) Local jurisdictions may establish construction requirements that are more stringent than the industry standards and therefore the Board's testing procedures may be incompatible.

Any person requesting a copy of the petition and related information may contact Robert Lucas of the Board at (916) 561-8700.

Sincerely,

/s/  
DOREATHEA JOHNSON  
Deputy Director, Legal Affairs

/s/  
By KURT HEPPLER  
Senior Staff Counsel

cc: Mark Maxwell, Key Termite and Pest Control

### STRUCTURAL PEST CONTROL BOARD

July 31, 2009

Office of Administrative Law  
300 Capitol Mall, Suite 1250  
Sacramento, CA 95814

RE: Petition to Adopt Legislation Relating to Section 8666 of the Business and Professions Code and the Denial Thereof



Dear Office of Administrative Law

On April 17, 2009, the Structural Pest Control Board (Board) received a petition from the IPMCC ("petitioner") to adopt regulations to clarify and enforce the provisions of section 8666 ("section 8666") of the Business and Professions Code. The petition was submitted by IMPCC's legal counsel in accordance with section 11340.6 of the Government Code. On April 19, 2009, a letter was dispatched to petitioner explaining that the matter was not received in time for the Board's April meeting but that the petition would be placed on the agenda for the subsequent meeting.

The Board has not previously adopted regulations to clarify the provisions of section 8666, which relate to disciplinary action that may be taken by the Board against a licensee who makes recommendations for corrective actions in excess of those necessary to eliminate conditions for which the licensee was employed. Making excessive recommendations is known in the pest control industry as 'overcalling'. The petition did not suggest any regulatory language but requested that the Board commence rulemaking to define excessive treatments.

On or about July 6, 2009, the Board published its agenda for the July 23–24 meeting, and the petition was identified as agenda item 12. On July 24, 2009, the Board, in accordance with section 11340.7 of the Government Code, considered the matter and denied the petition<sup>1</sup>. The denial was based on the following:

- 1) Sufficient clarity relating to the recommendations upon a finding an infestation or infection of wood destroying pests or organisms in an inaccessible area(s) is provided for in subdivision (a) of section 1991 of title 16 of the California Code of Regulations;
- 2) Sufficient clarity as to treatment recommendations made in excess of those required to eliminate the condition for which the Board licensee was employed is provided by section 8666;
- 3) The methods suggested by petitioner to detect termites in inaccessible areas have practical limitations; and,
- 4) While the Board is cognizant of environmental concerns, the issue of global warming is outside its jurisdiction.

Any person wishing to obtain a copy of the petition may contact Robert Lucas of the Board at (916) 561–8700.

<sup>1</sup> At the meeting, no party spoke in favor of the petition and petitioner was not present.

Sincerely,

/s/  
DOREATHEA JOHNSON  
Deputy Director, Legal Affairs

/s/  
By KURT HEPPLER  
Senior Staff Counsel

cc: Elizabeth Cason, Esq.

## OAL REGULATORY DETERMINATIONS

### OFFICE OF ADMINISTRATIVE LAW

#### DETERMINATION OF ALLEGED UNDERGROUND REGULATIONS (Summary Disposition)

(Pursuant to Government Code  
Section 11340.5 and  
Title 1, section 270, of the  
California Code of Regulations)

### DEPARTMENT OF CORRECTIONS AND REHABILITATION

Date: August 6, 2009

To: William Foster

From: Chapter Two Compliance Unit

Subject: **2009 OAL DETERMINATION NO. 17 (S)**  
**(CTU2009–0601–01)**  
(Summary Disposition issued pursuant to  
Gov. Code, sec. 11340.5; Cal. Code Regs., tit.  
1, sec. 270(f))

Petition challenging as an underground  
regulation Department Operations Manual  
(DOM) Supplements #108 and #040

On June 1, 2009, you submitted a petition to the Office of Administrative Law (OAL) asking for a determination as to whether Department Operations Manual (DOM) Supplement #108 and Supplement #040 are underground regulations. DOM Supplement #108 is titled

“Privilege Group C Housing” and addresses various privileges granted to inmates assigned to Privilege Group C Housing, such as personal property, recreation hours, access to the law library and religious programming. DOM Supplement #040 is titled “Central Unlocks, Releases and Lockups,” and concerns the procedures and timing of general and emergency unlocks. The DOM is issued by the California Department of Corrections and Rehabilitation; however, both DOM Supplements were issued by the warden at California Correctional Training Facility, Soledad. Both DOM Supplements are attached hereto as Exhibit A.<sup>1</sup>

In issuing a determination, OAL renders an opinion only as to whether a challenged rule is a “regulation” as defined in Government Code section 11342.600,<sup>2</sup> which should have been, but was not adopted pursuant to the Administrative Procedure Act (APA).<sup>3</sup> Nothing in this analysis evaluates the advisability or the wisdom of the underlying action or enactment. OAL has neither the legal authority nor the technical expertise to evaluate the underlying policy issues involved in the subject of this determination.

Generally, a rule which meets the definition of a “regulation” in Government Code section 11342.600 is required to be adopted pursuant to the APA. In some cases, however, the Legislature has chosen to establish exemptions from the requirements of the APA. Penal Code section 5058, subdivision (c), establishes exemptions expressly for the California Department of Corrections and Rehabilitation (CDCR):

(c) The following are deemed not to be “regulations” as defined in Section 11342.600 of the Government Code:

(1) Rules issued by the director applying solely to a particular prison or other correctional facility. . . .

This exemption is called the “local rule” exemption. It applies only when a rule is established for a single correctional institution.

In *In re Garcia* (67 Cal.App.4th 841, 845), the court discussed the nature of a “local rule” adopted by the warden for the Richard J. Donovan Correctional Facility (Donovan) which dealt with correspondence between inmates at Donovan:

The Donovan inter-institutional correspondence policy applies solely to correspondence entering or leaving Donovan. It applies to Donovan inmates in all instances.

The Donovan policy is not a rule of general application. It applies solely to Donovan and, under Penal Code section 5058, subdivision (c)(1), is not subject to APA requirements.

Similarly, the rules challenged by your petition apply solely to the inmates of California Correctional Training Facility, Soledad. Both DOM Supplements were issued by the warden of California Correctional Training Facility, Soledad. Inmates housed at other institutions are controlled by those other institution’s criteria for privilege groups and unlock procedures. The rules you challenged were issued by the California Correctional Training Facility, Soledad, and apply only to inmates at California Correctional Training Facility, Soledad. Therefore, the rules are “local rules” and are exempt from compliance with the APA pursuant to Penal Code section 5058(c)(1).<sup>4</sup>

<sup>4</sup> The rule challenged by your petition is the proper subject of a summary disposition letter pursuant to title 1, section 270 of the California Code of Regulations. Subdivision (f) of section 270 provides:

(f)(1) If facts presented in the petition or obtained by OAL during its review pursuant to subsection (b) demonstrate to OAL that the rule challenged by the petition is not an underground regulation, OAL may issue a summary disposition letter stating that conclusion. A summary disposition letter may not be issued to conclude that a challenged rule is an underground regulation.

(2) Circumstances in which facts demonstrate that the rule challenged by the petition is not an underground regulation include, but are not limited to, the following:

(A) The challenged rule has been superseded.  
(B) The challenged rule is contained in a California statute.  
(C) The challenged rule is contained in a regulation that has been adopted pursuant to the rulemaking provisions of the APA.

(D) The challenged rule has expired by its own terms.

**(E) An express statutory exemption from the rulemaking provisions of the APA is applicable to the challenged rule.** (Emphasis added.)

<sup>1</sup> On July 13, 2009, OAL issued a determination concerning these same DOM Supplements issued by the warden at California Correctional Training Facility, Soledad. 2009 OAL Determination No. 14(S) reached the same conclusion as this determination and found that the DOM Supplements were exempt from the Administrative Procedure Act because they are “local rules” pursuant to Penal Code section 5058(c)(1).

<sup>2</sup> “Regulation” means every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure.

<sup>3</sup> Such a rule is called an “underground regulation” as defined in California Code of Regulations, title 1, section 250, subsection (a):

“Underground regulation” means any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, including a rule governing a state agency procedure, that is a regulation with the Secretary of State pursuant to the APA and is not subject to an express statutory exemption from adoption pursuant to the APA.

The issuance of this summary disposition does not restrict your right to adjudicate the alleged violation of section 11340.5 of the Government Code.

/s/

SUSAN LAPSLEY  
Director

/s/

Kathleen Eddy  
Senior Counsel

Copy: Mathew Cate  
Tim Lockwood

## DEPARTMENT OF CORRECTIONS AND REHABILITATION

Date: August 6, 2009

To: Ricky Gray

From: Chapter Two Compliance Unit

Subject: **2009 OAL DETERMINATION NO. 16(S)**  
**(CTU2009-0609-01)**  
(Summary Disposition issued pursuant to Gov. Code, sec. 11340.5; Cal. Code Regs., tit. 1, sec. 270(f))

Petition Challenging as Underground Regulations: 1) a Memorandum Dated December 28, 2006, with a Subject Heading "Double Cell Housing Policy" and 2) Operational Procedure 222, section 405, titled "CDCR Form 1882-B ASU/SHU Double Cell Review"

On June 9, 2009, you submitted a petition to the Office of Administrative Law (OAL) alleging that the California Department of Corrections and Rehabilitation (CDCR) had issued, used, enforced or attempted to enforce underground regulations. Your petition asks for a determination as to whether a Memorandum dated December 28, 2006, with a subject heading "Double Cell Housing Policy" (Memorandum) and Operational Procedure 222 (OP 222), section 405, titled "CDCR Folio 1882-B ASU/SHU Double Cell Review" constitute underground regulations.

The Memorandum is signed by Derral G. Adams, Warden, at California State Prison, Corcoran. It describes some options that may be utilized if an inmate refuses to be double-celled. One of the options to be utilized, if applicable, is: "Immediately inventory the inmate's property and store pending the outcome of ASU placement and/or subject to disciplinary action. . . ." Another listed option is: "Upon the first refusal of ac-

cepting a cellmate, staff shall complete a CDCR 115, Rules Violation Report, . . . ." The Memorandum is attached hereto as Exhibit A.

OP 222, section 405 is unsigned and includes no information to identify it with Corcoran or any other correctional facility. Although it includes the acronym CDCR, there is no indication that it was issued directly from that agency. It describes some of the procedures for double cell assignments. You challenge the following statements in this document: "Each inmate candidate who agrees to the assignment is expected to sign the CDCR Form 1882-B to indicate compatibility. If an inmate refuses to sign the agreement, then this shall also be documented in the designated section of the form." OP 222, section 405 is attached hereto as Exhibit B.

In issuing a determination, OAL renders an opinion only as to whether a challenged rule is a "regulation" as defined in Government Code section 11342.600,<sup>1</sup> which should have been, but was not adopted pursuant to the Administrative Procedure Act (APA).<sup>2</sup> Nothing in this analysis evaluates the advisability or the wisdom of the underlying action or enactment. OAL has neither the legal authority nor the technical expertise to evaluate the underlying policy issues involved in the subject of this determination.

Generally, a rule which meets the definition of a "regulation" in Government Code section 11342.600 is required to be adopted pursuant to the APA. In some cases, however, the Legislature has chosen to establish exemptions from the requirements of the APA. Penal Code section 5058, subdivision (c), establishes exemptions expressly for the California Department of Corrections and Rehabilitation:

(c) The following are deemed not to be "regulations" as defined in Section 11342.600 of the Government Code:

(1) Rules issued by the director applying solely to a particular prison or other correctional facility. . . .

<sup>1</sup> "Regulation" means every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure.

<sup>2</sup> Such a rule is called an "underground regulation" as defined in California Code of Regulations, title 1, section 250, subsection (a):

"Underground regulation" means any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, including a rule governing a state agency procedure, that is a regulation as defined in section 11342.600 of the Government Code, but has not been adopted as a regulation and filed with the Secretary of State pursuant to the APA and is not subject to an express statutory exemption from adoption pursuant to the APA.

This exemption is called the “local rule” exemption. It applies only when a rule is established for a single correctional institution.

In *In re Garcia* (67 Cal.App.4th 841, 845), the court discussed the nature of a “local rule” adopted by the warden for the Richard J. Donovan Correctional Facility (Donovan) which dealt with correspondence between inmates at Donovan:

The Donovan inter-institutional correspondence policy applies solely to correspondence entering or leaving Donovan. It applies to Donovan inmates in all instances.

. . .

The Donovan policy is not a rule of general application. It applies solely to Donovan and, under Penal Code section 5058, subdivision (c)(1), is not subject to APA requirements.

Similarly, the rules in the Memorandum challenged by your petition apply solely to the inmates of California State Prison, Corcoran. The Memorandum, dated December 28, 2006, was issued by Derral G. Adams, Warden, at California State Prison, Corcoran. Inmates housed at other institutions are controlled by those other institutions’ rules dealing with double cell housing. The rules you challenge were issued by the California State Prison, Corcoran, and apply only to inmates at the California State Prison, Corcoran. Therefore, these rules are “local rules” and are exempt from compliance with the APA pursuant to Penal Code section 5058(c)(1).<sup>3</sup>

Since OP 222, section 405 is unsigned and includes no information to identify it with Corcoran or any other correctional facility, or to indicate whether it was issued directly from CDCR, OAL is unable to determine whether OP 222, section 405 was created as a set of

rules for more than one correctional facility or solely for California State Prison, Corcoran. Consequently, OAL can make no determination as to whether the rules in OP 222, section 405 are underground regulations.

The issuance of this summary disposition does not restrict your right to adjudicate the alleged violation of section 11340.5 of the Government Code.

/s/  
Susan Lapsley  
Director

/s/  
George Shaw  
Staff Counsel

Copy: Mathew Cate  
John McClure

## SUMMARY OF REGULATORY ACTIONS

### REGULATIONS FILED WITH SECRETARY OF STATE

This Summary of Regulatory Actions lists regulations filed with the Secretary of State on the dates indicated. Copies of the regulations may be obtained by contacting the agency or from the Secretary of State, Archives, 1020 O Street, Sacramento, CA 95814, (916) 653-7715. Please have the agency name and the date filed (see below) when making a request.

File# 2009-0713-04  
AIR RESOURCES BOARD  
Diesel Particulate Matter Control Measures

This change without regulatory effect revises a reference to reflect the renumbering of the paragraph containing the definition referenced.

Title 13  
California Code of Regulations  
AMEND: 2020(b)  
Filed 08/12/2009  
Agency Contact: Trini Balcazar (916) 445-9564

File# 2009-0624-01  
BOARD OF BARBERING AND COSMETOLOGY  
Building Standards

The Board of Barbering and Cosmetology (Board) submits this nonsubstantive rulemaking pursuant to Title 1 of the California Code of Regulations, section 100. The Board changes existing citations found in Title 16, California Code of Regulations section 995 relating to building and plumbing codes within Title 24 to up-

<sup>3</sup> The rules challenged by your petition are the proper subject of a summary disposition letter pursuant to title 1, section 270 of the California Code of Regulations. Subdivision (f) of section 270 provides:

(f)(1) If facts presented in the petition or obtained by OAL during its review pursuant to subsection (b) demonstrate to OAL that the rule challenged by the petition is not an underground regulation, OAL may issue a summary disposition letter stating that conclusion. A summary disposition letter may not be issued to conclude that a challenged rule is an underground regulation.

(2) Circumstances in which facts demonstrate that the rule challenged by the petition is not an underground regulation include, but are not limited to, the following:

(A) The challenged rule has been superseded.

(B) The challenged rule is contained in a California statute.

(C) The challenged rule is contained in a regulation that has been adopted pursuant to the rulemaking provisions of the APA.

(D) The challenged rule has expired by its own terms.

(E) **An express statutory exemption from the rulemaking provisions of the APA is applicable to the challenged rule.** (Emphasis added.)



date the citations to reflect current and accurate Title 24 citations.

Title 16  
California Code of Regulations  
AMEND: 995  
Filed 08/05/2009  
Agency Contact: Kevin Flanagan (916) 575-7104

File# 2009-0630-01  
**BOARD OF PAROLE HEARINGS**  
Delays of Life Parole Consideration Hearings

The purpose of this rulemaking is to amend Title 15, section 2253 of the California Code of Regulations to correspond to changes made in the law after passage of Proposition 9, the Victims' Bill of Rights Act of 2009: Marsy's Law. One of the changes implemented with the passage of this proposition was to increase the time between parole hearings for those individuals with life sentences who are denied parole. Marsy's Law also increased the number of people who can attend and testify at parole hearings. The distinction in the Penal Code between those with a life sentence convicted of murder and those who were convicted on a lesser charge is removed for purposes of setting the next parole hearing after a parole denial. BPH is amending section 2253 to reflect that this distinction has been removed as it relates to the period of time for which an inmate may request a voluntary waiver of their right to a parole hearing.

Title 15  
California Code of Regulations  
AMEND: 2253  
Filed 08/11/2009  
Effective 08/11/2009  
Agency Contact:  
Elizabeth Geiger (916) 324-6434

File# 2009-0630-02  
**BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS**  
Fingerprint and Disclosure Requirements — Fee Changes

Board of Vocational Nursing and Psychiatric Technicians (Board) submitted this certificate of compliance action to amend and make permanent title 16 regulations adopted as an emergency in OAL File No. 2008-1230-03E. These regulations require, as specified, Vocational Nursing and Psychiatric Technician applicants and licensees to respond to Board inquiries, submit fingerprints to the Department of Justice, and disclose prior criminal convictions or disciplinary actions as a condition to license application, renewal, or

reinstatement, and increases initial license, renewal, and delinquency fees.

Title 16  
California Code of Regulations  
AMEND: 2504.1, 2517.5, 2537, 2540.6, 2564.1, 2575.5, 2590, 2592.6  
Filed 08/11/2009  
Agency Contact: Sophia Cornejo (916) 263-7848

File# 2009-0701-02  
**DEPARTMENT OF CORRECTIONS AND REHABILITATION**  
Adult Parole and Registration

This regulatory action adopts provisions governing the registration requirements of adult parolees pursuant to Penal Code sections 186.30 (gang offenders), 290 and 290.85 (sex offenders), and 457.1 (arson offenders), and Health and Safety Code section 11590 (drug offenders).

Title 15  
California Code of Regulations  
ADOPT: 3650, 3651, 3652, 3653, 3654 REPEAL: 3652.1  
Filed 08/11/2009  
Effective 09/10/2009  
Agency Contact: Randy Marshall (916) 341-7328

File# 2009-0806-02  
**DEPARTMENT OF FOOD AND AGRICULTURE**  
Mediterranean Fruit Fly Interior Quarantine

This emergency regulatory action will establish a new quarantine area in the Imperial Beach area (approximately 37 square miles) of San Diego County for a total of approximately 236 square miles surrounding the Mediterranean fruit fly infestations in San Diego County. The effect of the amendment is to establish the authority for the State to regulate movement of hosts and possible carriers of Mediterranean fruit fly within and from this new area under quarantine to prevent artificial spread of the fly to noninfested areas.

Title 3  
California Code of Regulations  
AMEND: 3406(b)  
Filed 08/07/2009  
Effective 08/07/2009  
Agency Contact:  
Stephen S. Brown (916) 654-1017

File# 2009-0730-04  
**DEPARTMENT OF FOOD AND AGRICULTURE**  
Light Brown Apple Moth Interior Quarantine

This emergency regulatory action expands the area under quarantine for Light Brown Apple Moth in Sonoma, Santa Clara, and Solano counties and removes the

Parkfield area of Monterey County. It also adds specified commercially produced crops to the list of those exempted from the quarantine.

Title 3  
California Code of Regulations  
AMEND: 3434(b), 3434(c)  
Filed 08/05/2009  
Effective 08/05/2009  
Agency Contact:  
Stephen S. Brown (916) 654-1017

File# 2009-0708-02  
DEPARTMENT OF FOOD AND AGRICULTURE  
Plant Improvement Program

The purpose of this rulemaking is to adopt Title 3, section 902.15 of the California Code of Regulations. This new section is being adopted to establish a plant improvement program to identify and record deficiencies in plant facilities and equipment. This applies to any slaughtering, curing, smoking, drying, rendering, or similar establishment at which inspection is maintained. This requirement includes the use of an incorporated form to establish a record with due dates for the correction of deficiencies. Failure to complete a correction subjects an establishment to a California Rejected tag.

Title 3  
California Code of Regulations  
ADOPT: 902.15  
Filed 08/12/2009  
Effective 09/11/2009  
Agency Contact: Nancy Grillo (916) 263-2347

File# 2009-0701-03  
PHYSICAL THERAPY BOARD OF CALIFORNIA  
Disciplinary Guidelines

This is the resubmission of a disapproved rulemaking regarding the Physical Therapy Board's amendments to their Disciplinary Guidelines.

Title 16  
California Code of Regulations  
AMEND: 1399.15  
Filed 08/05/2009  
Effective 09/04/2009  
Agency Contact: Elsa Ybarra (916) 561-8262

File# 2009-0626-02  
STATE WATER RESOURCES CONTROL BOARD  
BPA to Revise Standards for Surface Waters of the Antelope Hydrologic Unit

On November 29, 2007, the Lahontan Regional Water Quality Control Board (Regional Board) adopted Resolution R6T-2007-0036 amending the Water Qual-

ity Control Plan for the Lahontan Region (Basin Plan). This Basin Plan amendment: (1) established site-specific beneficial uses for Amargosa Creek, the Piute Ponds and wetlands, and Rosamond Dry Lake, (2) established site-specific water quality objectives for ammonia for Amargosa Creek and the Piute Ponds and wetlands, and (3) corrected a numerical error in the existing water quality objective for ammonia. The State Water Resources Control Board approved the amendment of the Basin Plan in Resolution No. 2009-0018 on March 17, 2009.

Title 23  
California Code of Regulations  
ADOPT: 3959.2  
Filed 08/05/2009  
Effective 09/04/2009  
Agency Contact: Peter Martin (916) 341-5557

**CCR CHANGES FILED  
WITH THE SECRETARY OF STATE  
WITHIN March 11, 2009 TO  
August 12, 2009**

All regulatory actions filed by OAL during this period are listed below by California Code of Regulations titles, then by date filed with the Secretary of State, with the Manual of Policies and Procedures changes adopted by the Department of Social Services listed last. For further information on a particular file, contact the person listed in the Summary of Regulatory Actions section of the Notice Register published on the first Friday more than nine days after the date filed.

**Title 2**

08/03/09 ADOPT: 647.5, 647.25, 647.36, 647.37.1  
AMEND: 647.1, 647.2, 647.3, 647.4,  
647.20, 647.20.1, 647.22, 647.23,  
647.24, 647.26, 647.30, 647.31, 647.32,  
647.33, 647.35, 647.38 REPEAL:  
647.25, 647.34  
07/30/09 ADOPT: 1899.570, 1899.575, 1899.580,  
1899.585  
07/20/09 ADOPT: 721  
07/07/09 AMEND: 18450.4  
07/06/09 AMEND: 18940.2  
06/15/09 ADOPT: 18746.4 AMEND: 18741.1,  
18746.1, 18746.3  
06/12/09 ADOPT: 649.14, 649.17, 649.18, 649.23,  
649.25, 649.29, 649.32, 649.33, 649.48  
AMEND: 647.4, 649, 649.2, 649.4,  
649.7, 649.8, 649.11, 649.12, 649.13,  
649.15, 649.16, 649.22, 649.24, 649.26,  
649.27, 649.28, 649.30, 649.31, 649.35,  
649.36, 649.50, 649.51, 649.57, 649.58,  
649.59, 649.62 REPEAL: 649.3, 649.6,  
649.9, 649.10, 649.14, 649.23, 649.25

06/09/09	ADOPT: 18405	1245.8, 1245.9, 1245.10, 1245.11,
06/01/09	ADOPT: 250.1	1245.12, 1245.13, 1245.14, 1245.15,
05/21/09	AMEND: 18705.1	1245.16, 1246, 1247, 1248, 1249, 1250,
05/14/09	ADOPT: 21000, 21001, 21002, 21003, 21004, 21005, 21006, 21007, 21008, 21009	1251, 1252, 1253, 1254, 1255, 1256, 1257, 1258, 1259, 1260, 1260.1, 1261, 1262, 1263, 1264, 1265, 1266, 1267, 1268, 1269, 1270 REPEAL: 1203, 1210, 1211, 1212, 1213, 1214, 1215, 1216, 1217, 1218, 1219, 1220, 1221, 1224, 1225, 1226, 1227, 1228, 1229, 1230, 1231, 1237
05/08/09	ADOPT: 18410 AMEND: 18402	
04/30/09	AMEND: 1859.129, 1859.197	
04/28/09	AMEND: div. 8, ch. 111, section 59560	
04/22/09	ADOPT: 1859.148.2, 1859.166.2 AMEND: 1859.2, 1859.121, 1859.164.2, 1859.197	03/18/09 AMEND: 3435(b)

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08/12/09 ADOPT: 902.15  
 08/07/09 AMEND: 3406(b)  
 08/05/09 AMEND: 3434(b), 3434(c)  
 08/04/09 AMEND: 3423(b)  
 07/31/09 ADOPT: 3436  
 07/24/09 AMEND: 3434(b)  
 07/22/09 ADOPT: 3591.23  
 07/22/09 AMEND: 3406(b)  
 07/21/09 AMEND: 3591.2(a)  
 07/20/09 AMEND: 3591.20(a)  
 07/13/09 AMEND: 625  
 07/07/09 AMEND: 3435  
 07/02/09 AMEND: 3423(b)  
 06/30/09 AMEND: 3434(b)  
 06/22/09 AMEND: 3434(b)  
 06/19/09 AMEND: 3591.20(a)  
 06/15/09 AMEND: 3406(b)  
 06/15/09 AMEND: 3434(b)  
 06/01/09 AMEND: 3406(b)  
 06/01/09 ADOPT: 3408  
 05/26/09 AMEND: 3434(b)  
 05/20/09 AMEND: 3434(b)  
 05/20/09 AMEND: 3434(b)  
 05/13/09 AMEND: 6800  
 05/04/09 AMEND: 3434(b)  
 04/27/09 AMEND: 3434(b)  
 04/20/09 AMEND: 6452.2  
 03/30/09 AMEND: 3434(b)  
 03/25/09 AMEND: 6860  
 03/23/09 AMEND: 3423(b)  
 03/19/09 ADOPT: 1210, 1211, 1212, 1213, 1214,  
 1215, 1216, 1217, 1218, 1219, 1220,  
 1221, 1222.1, 1222.4, 1209, 1209.1,  
 1245.1, 1245.2, 1245.3, 1245.4, 1260.2,  
 1269, 1269.1, 1269.2, 1271 AMEND:  
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 1207, 1208, 1222, 1223, 1223.1, 1235,  
 1236, 1238, 1239, 1240, 1241, 1242,  
 1243, 1244, 1245, 1245.1, 1245.2,  
 1245.3, 1245.4, 1245.5, 1245.6, 1245.7,

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08/04/09 AMEND: 1853  
 07/31/09 AMEND: 10020  
 07/31/09 ADOPT: 7051, 7052, 7053, 7054, 7055,  
 7056, 7057, 7058, 7059, 7060, 7061,  
 7062, 7063, 7064, 7065, 7066, 7067,  
 7068, 7069, 7070, 7071  
 07/21/09 AMEND: 1979, 1979.1  
 07/21/09 REPEAL: 1950.1  
 06/25/09 ADOPT: 12486  
 06/22/09 ADOPT: 8078.1 AMEND: 8070, 8072,  
 8076, 8078  
 06/04/09 AMEND: 106  
 05/18/09 ADOPT: 12488, 12508, 12510, 12511,  
 12514 AMEND: 12480, 12486  
 05/18/09 ADOPT: 12482  
 05/12/09 AMEND: 406  
 05/12/09 ADOPT: 12591  
 04/24/09 ADOPT: 12480, 12492, 12494, 12496,  
 12498, 12499, 12501, 12502, 12504  
 AMEND: 12482  
 04/24/09 AMEND: 12482  
 03/23/09 AMEND: 10175, 10176, 10177, 10182,  
 10185, 10187, 10188, 10189, 10190  
 03/11/09 AMEND: 1865

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07/21/09 ADOPT: 43200  
 07/21/09 ADOPT: 43220  
 07/21/09 AMEND: 42920  
 07/21/09 ADOPT: 40411  
 07/09/09 AMEND: 18100  
 07/03/09 ADOPT: 80027.1, 80048.7 AMEND:  
 80027  
 06/29/09 ADOPT: 19821.5, 19825.1, 19828.4,  
 19837.3, 19839, 19845.2 AMEND:  
 19815, 19816, 19816.1, 19828.3,  
 19837.2, 19845.1, 19846  
 05/28/09 AMEND: 9521  
 05/11/09 AMEND: 80023, 80024.4, 80024.5,  
 80024.6, 80025.5, 80026, 80026.1,

80026.6, 80034.5 REPEAL: 80024.3,  
80026.4, 80042, 80042.5, 80569  
05/11/09 AMEND: 24002, 24003, 24005  
05/07/09 ADOPT: 3090, 3090.1, 3091, 3092,  
3093, 3094, 3095, 3096, 3096.1, 3096.2,  
3097, 3098, 3098.1, 3098.2, 3099  
04/30/09 ADOPT: 26000  
03/27/09 AMEND: 3001, 3051, 3060, 3061, 3062,  
3063, 3064, 3065, 3066, 3067, 3068,  
3069, 3070

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07/31/09 AMEND: 1637, 1646  
07/27/09 AMEND: 5006.1  
07/24/09 AMEND: 3466  
07/23/09 AMEND: 1598, 1599  
07/06/09 ADOPT: 5199  
07/06/09 ADOPT: 5199.1  
06/22/09 AMEND: 230.1  
06/18/09 ADOPT: 9792.23.1, 9792.23.2,  
9792.23.3, 9792.23.4, 9792.23.5,  
9792.23.6, 9792.23.7, 9792.23.8,  
9792.23.9, 9792.24, 9792.24.1,  
9792.24.2, 9792.24.3, 9792.25, 9792.26  
AMEND: 9792.20, 9792.21, 9792.22,  
9792.23  
05/01/09 AMEND: 3030, 3037, 3089, 3097, 3098,  
3101, 3107  
05/01/09 AMEND: 4530  
04/20/09 AMEND: 10100.2, 10101.1, 10103.2,  
10104, 10105, 10106.1, 10106.5,  
10107.1, 10108, 10109, 10111.1,  
10111.2, 10112, 10113.4, 10113.5,  
10114.2, 10115, 10115.1, 10115.2  
04/06/09 ADOPT: 227, 314, 389 AMEND: 281,  
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04/01/09 ADOPT: 2710.1, 2716.1, 2718, 2718.1,  
2738, 2739.0, 2739.4, 2742.0, 2742.1,  
2742.2, 2742.3, 2745.0, 2745.1, 2749.2,  
2754.1, 2754.2, 2796, 2799.1, 2799.2,  
2799.3, 2799.4, 2799.5, 2799.6, 2812.2,  
2812.3, 2832, 2833.1, 2833.2, 2882.2,  
2985.0, 2985.1, 2985.2, 2987.0, 2987.1,  
2989.0, 2989.1 AMEND: 2700, 2706,  
2707, 2710, 2712, 2714, 2715, 2725,  
2735, 2739.1, 2743, 2745.2, 2749.1,  
2753, 2790, 2791, 2792, 2795, 2797,  
2799.0, 2805, 2810, 2812.1, 2816, 2819,  
2820, 2833, 2845, 2847, 2863, 2873,  
2874, 2875, 2880, 2882.1, 2890, 2893,  
2908, 2910, 2931, 2932, 2933, 2934,  
2935, 2946, 2974 REPEAL: 2742

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08/04/09 AMEND: 7331

06/29/09 ADOPT: 10700, 10701 AMEND: 10518,  
10529 REPEAL: 10532, 10533  
06/26/09 ADOPT: 7212.1, 7212.2, 7212.3, 7212.4  
AMEND: 7210, 7211, 7212

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08/04/09 ADOPT: 2355.1, 2355.2 AMEND:  
2359.4 amended and renumbered to  
2355.3, 2359.7 renumbered to 2355.4,  
2359.8 renumbered to 2355.5 REPEAL:  
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2355.6, 2355.7, 2355.8, 2356.1, 2356.2,  
2356.3, 2356.4, 2356.5, 2356.6, 2356.7,  
2356.8, 2356.9, 2357.1, 2357.2, 2357.3,  
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2357.13, 2357.14, 2357.15, 2357.16,  
2357.17, 2357.18, 2357.19, 2358.1,  
2358.2, 2358.3, 2358.4, 2358.5, 2358.6,  
2358.7, 2358.8, 2358.9, 2359.1, 2359.2,  
2359.3, 2359.5, 2359.6  
07/29/09 ADOPT: 2194.50, 2194.51, 2194.52,  
2194.53, 2194.54, 2194.55  
07/14/09 ADOPT: 2359.8  
07/09/09 AMEND: 2797  
07/06/09 AMEND: 250.30  
06/24/09 AMEND: 2498.4.9  
06/24/09 AMEND: 2498.4.9  
06/24/09 AMEND: 2498.4.9  
06/01/09 ADOPT: Article 1, 2031.1, 2031.2,  
2031.3, 2031.4, 2031.5, 2031.6, Article  
2, 2031.7, 2031.8, Article 3, 2031.9,  
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06/01/09 ADOPT: 4.1, 4.2, 4.3, 4.4, 4.5, 4.6, 4.7,  
4.8, 4.9, 4.10  
06/01/09 ADOPT: 2850.1, 2850.2, 2850.3, 2850.4,  
2850.5, 2850.6, 2850.7, 2850.8, 2850.9,  
2850.10  
05/29/09 ADOPT: 5500, 5501, 5502, 5503, 5504,  
5505, 5506, 5507  
05/12/09 AMEND: 2716.1, 2790.1.5, 2810.5  
05/01/09 AMEND: 2699.6603  
03/27/09 AMEND: 2498.6 (Exhibit C)  
03/25/09 AMEND: 2661.3, 2661.4, 2662.1  
03/23/09 AMEND: 2498.6

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05/21/09 AMEND: 1005, 1007, 1008  
04/17/09 AMEND: 30.1  
04/01/09 ADOPT: 9056, 9057, 9058, 9059, 9060  
AMEND: 1018  
04/01/09 ADOPT: 9050, 9051, 9052, 9053, 9054,  
9055 REPEAL: 1002  
03/30/09 ADOPT: 30.15



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08/12/09 AMEND: 2020(b)  
 07/29/09 AMEND: 599  
 07/17/09 AMEND: 2111, 2112, Appendix A, 2139,  
 2147, 2440, 2441, 2442, 2443.1, 2443.2,  
 2443.3, 2444.1, 2444.2, 2445.1, 2445.2,  
 2446, 2447, 2474, Documents  
 Incorporated by Reference REPEAL:  
 2448  
 06/29/09 AMEND: 2702, 2704  
 06/16/09 AMEND: 1239  
 06/04/09 ADOPT: 2340, 2341, 2342, 2343, 2344,  
 2345  
 05/22/09 ADOPT: 225.38 AMEND: 225.00,  
 225.03, 225.06, 225.09, 225.21, 225.35,  
 225.45, 225.48, 225.54, 225.72  
 03/18/09 ADOPT: 1962.1 AMEND: 1900, 1962,  
 1962.1 renumber as 1962.2

**Title 13, 17**

05/29/09 ADOPT: Title 13: 2299.2, Title 17:  
 93118.2 AMEND: Title 13: 2299.1, Title  
 17: 93118

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07/14/09 AMEND: 124  
 07/13/09 AMEND: 163  
 06/23/09 AMEND: 3959(b)(4)  
 06/23/09 ADOPT: 4351.1 AMEND: 4351  
 06/16/09 AMEND: 753.5  
 06/15/09 AMEND: 27.80  
 06/12/09 AMEND: 265, 353, 360, 361, 362, 363,  
 364, 555, 708  
 06/02/09 AMEND: 7.50(b)(91.1)  
 05/26/09 AMEND: 7.00, 7.50  
 05/21/09 AMEND: 7.50(b)(178)  
 05/15/09 AMEND: 790, 818.02, 827.02  
 05/14/09 ADOPT: 874.2.5 AMEND: 790, 873.1,  
 873.2, 873.4, 873.5, 873.7, 874.2, 877.2,  
 877.3 REPEAL: 873.3  
 05/13/09 AMEND: 25201  
 05/07/09 AMEND: 25201  
 05/04/09 AMEND: 670.5  
 04/27/09 ADOPT: 749.5  
 04/08/09 AMEND: 2245, 2320  
 03/18/09 AMEND: 632  
 03/16/09 ADOPT: 20004.1, 20009.1, 20009.2  
 AMEND: 20000, 20001, 20002, 20003,  
 20004, 20005, 20008, 20009

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08/11/09 AMEND: 2253  
 08/11/09 ADOPT: 3650, 3651, 3652, 3653, 3654  
 REPEAL: 3652.1  
 07/28/09 ADOPT: 3077, 3077.1, 3077.2, 3077.3,  
 3077.4 AMEND: 3000, 3043.6, 3375

06/17/09 ADOPT: 3640, 3730 AMEND: 3500,  
 3501, 3502, 3600, 3610, 3620, 3625,  
 3630, 3740  
 06/17/09 ADOPT: 3099  
 05/12/09 AMEND: 3000, 3190, 3375, 3376.1,  
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 05/04/09 AMEND: 3335(d)(3)  
 04/20/09 AMEND: 1004, 1006, 1007, 1008, 1012,  
 1013, 1018, 1027, 1028, 1029, 1032,  
 1040, 1044, 1045, 1046, 1055, 1056,  
 1059, 1063, 1066, 1082, 1101, 1105,  
 1144, 1151, 1161, 1209, 1217, 1230,  
 1241, 1243, 1245, 1247, 1262, 1272  
 04/02/09 ADOPT: 3334 AMEND: 3000

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08/11/09 AMEND: 2504.1, 2517.5, 2537, 2540.6,  
 2564.1, 2575.5, 2590, 2592.6  
 08/05/09 AMEND: 995  
 08/05/09 AMEND: 1399.15  
 08/04/09 ADOPT: 1773.5 AMEND: 1773  
 07/28/09 AMEND: 4110  
 07/27/09 AMEND: 4130  
 07/24/09 AMEND: 1391.10, 1391.12  
 07/24/09 AMEND: 1387, 1387.6  
 07/17/09 AMEND: 1999.5  
 06/26/09 ADOPT: 2611 AMEND: 2606, 2614,  
 2615, 2616, 2621, 2649 REPEAL: 2612,  
 2613, 2623  
 06/26/09 AMEND: 426.51  
 06/16/09 AMEND: 1524  
 06/12/09 AMEND: 2021, 2068.5, 2068.6  
 REPEAL: 2067, 2068  
 06/03/09 AMEND: 1888  
 06/02/09 AMEND: 1419, 1419.1, 1419.3  
 05/20/09 ADOPT: 1815 AMEND: 1886.40  
 04/28/09 AMEND: 1524  
 04/27/09 AMEND: 1760  
 04/03/09 AMEND: 3830  
 03/24/09 ADOPT: 1398.12  
 03/20/09 AMEND: 1937, 1950, 1950.5, 1953  
 03/11/09 AMEND: 1715, 1784, Form 17M-13,  
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**Title 17**

06/18/09 AMEND: 94508, 94509, 94510, 94512,  
 94513, 94515  
 04/24/09 AMEND: 30100, 30346.1, 30373  
 03/11/09 AMEND: 93119

**Title 18**

07/30/09 AMEND: 1668  
 06/04/09 AMEND: 1532, 1533.1, 1533.2, 1534,  
 1535  
 05/21/09 AMEND: 25114  
 05/12/09 AMEND: 1502

04/29/09 AMEND: 1591  
 04/06/09 ADOPT: 25113 AMEND: 25111  
 03/19/09 AMEND: 23701, 23772  
 03/11/09 AMEND: 1506, 1524  
 03/11/09 AMEND: 1705

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08/03/09 AMEND: 1670, 1671, 1672, 1673, 1674, 1675  
 07/10/09 AMEND: 1601, 1602, 1604, 1605.3, 1606  
 07/10/09 AMEND: 1601, 1602, 1603, 1604, 1605.1, 1605.2, 1605.3, 1606, 1607, 1608  
 06/23/09 AMEND: 3.1, 3.2, 4.3, 8.6, 10.3, 11.3, 13.2  
 06/04/09 AMEND: 1.4, 1.6, 1.7, 1.8, 1.9, 1.10, 1.11, 1.12, 1.13, 1.14, 1.15, 1.16, 2.3, 2.6, 3.2, 3.6, 8.1, 8.2, 8.3, 11.6, 13.9, 14.2, 14.3, 14.6, 15.2, 17.3, 17.4, 18.1  
 04/22/09 ADOPT: 3100, 3101, 3101.5, 3102, 3103, 3104, 3105, 3106, 3107, 3108

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06/22/09 ADOPT: 7700, 7701, 7702, 7703, 7704, 7705, 7706, 7707, 7708, 7709, 7710, 7711  
 05/14/09 AMEND: 1554, 1556

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07/31/09 AMEND: 80001, 85002 and 85068.4  
 07/23/09 AMEND: 120201  
 07/22/09 AMEND: 51529

07/20/09 AMEND: 68201, 68202, 68205, 68206, 68207, 68208, 68209, 68210, 68211, and Appendix 1 to Article 1 of Chapter 47

07/13/09 AMEND: 66273.3, 66273.39  
 06/17/09 AMEND: 926-3, 926-4, 926-5  
 05/21/09 AMEND: 2601-1  
 04/21/09 AMEND: 51543  
 03/12/09 AMEND: 51517

**Title 23**

08/05/09 ADOPT: 3959.2  
 07/09/09 ADOPT: 3959.3  
 06/25/09 ADOPT: 3989.8  
 06/16/09 ADOPT: 3939.36  
 06/01/09 ADOPT: 2631.2  
 05/14/09 ADOPT: 2920

**Title 25**

05/22/09 ADOPT: 4200, 4202, 4204, 4206, 4208, 4210, 4212, 4214, 4216  
 05/20/09 AMEND: 8217  
 05/13/09 ADOPT: 6932 REPEAL: 6932  
 05/07/09 ADOPT: 6932 REPEAL: 6932

**Title 27**

07/23/09 AMEND: 25204  
 04/07/09 AMEND: 25705(b)

**Title MPP**

07/06/09 ADOPT: 31-003, 31-502 AMEND: 31-002  
 06/29/09 AMEND: 11-425, 22-001, 22-003, 22-009, 45-302, 45-303, 45-304, 45-305, 45-306